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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 136.

ALEXANDER R. SHEPHERD, SAMUEL CROSS, PETER F. BACON, ET AL., APPELLANTS,

vs.

GEORGE S. PEPPER.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED OCTOBER 9, 1886.

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a *Clerk's Certificate.*

CLERK'S OFFICE,
SUPREME COURT OF THE DISTRICT OF COLUMBIA.
WASHINGTON, *Oct. 8th*, 1886.

I, R. J. Meigs, clerk of said court, do hereby certify that the annexed 953 pages of writing attached to this certificate and contained in 3 volumes, marked Nos. 1, 2, & 3, are truly copied from originals on file and of record in said office, and that said originals taken together constitute the entire record in equity cause No. 7803, docket 21, wherein George S. Pepper is complainant and Alexander R. Shepherd and others are defendants.

Seal Supreme Court of the District of Columbia.

Witness my hand and the seal of said court this 8th day of October, A. D. 1886.
R. J. MEIGS, *Clerk*,
By L. P. WILLIAMS, *Ass't Clerk*.

1 *Original Bill. Filed Jul.* 20, 1881.

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER, Complainant, *vs.* ALEXANDER R. SHEPHERD, MARY G. SHEPHERD, MERCY Maria Carter Gray, James E. Fitch, Lewis J. Davis, Andrew C. Bradley, William F. Mattingly, James M. Johnston, David L. Bartlett, Peter Bacon, Samuel Cross, John Alexander, George M. Barker, Defendants.	In Equity. No. 7803.

To the honorable the justices of the supreme court of the District of Columbia, holding a special term in equity:

The complainant complains as follows:

1. That he is a resident of the city of Philadelphia, in the
2 State of Pennsylvania; the defendants, Alexander R. Shepherd and Mary G. Shepherd, are residents of ——, in the Republic of Mexico; the defendant, Mercy Maria Carter Gray, is a resident of the State of California, and the other defendants are residents of the District of Columbia.

2. That heretofore, to wit, on or about the first day of June, A. D. 1874, the defendants, Alexander R. Shepherd and Mary G. Shepherd, his wife, executed and delivered to one William H. Philip (now deceased) and the defendant, Andrew C. Bradley, a deed conveying to them as joint tenants and in fee simple the following-described real estate, situate in the city of Washington, District of Columbia, to wit: Part of lot numbered two (2), in square numbered one hundred and sixty-four (164), and bounded and described as follows: Beginning at a point on North K street forty-three feet and

nine inches ($43\frac{9}{12}$ feet) east of the southwestern corner of said
3 square and running thence west on K street forty-three feet and nine inches ($43\frac{9}{12}$ feet) to said southwestern corner of said square; thence northwesterly along the line of Connecticut avenue about eighty feet and ten inches ($80\frac{10}{12}$ feet) to the south line of original lot numbered three (3), in said square; thence northeasterly and at right angles with said avenue and along the line of said lot three (3) about eighty-five feet to intersect a line drawn due north from the point of beginning, and thence due south to the point of beginning, together with all the improvements, ways, easements, rights, privileges, and appurtenances to the same belonging or in anywise appertaining, in trust, nevertheless, to secure the complainant thirty-five thousand dollars ($35,000), money loaned by the complainant to the defendant, and for which sum the defendant, Alexander R. Shepherd, had made and delivered to the complainant his promissory note, dated June 1, 1874, payable to the order
4 of the complainant five years after date, with interest payable semi-annually at the rate of nine per centum per annum until paid, ten coupon notes of even date therewith and thereunto attached being given for the interest aforesaid and payable at the Farmers' and Mechanics' National Bank, Philadelphia, Pa., as will more fully appear by reference to said deed of trust, recorded in Liber 754, folio 51, of the land records for the District of Columbia, and which it is prayed may be taken and read as part hereof.

3. Subsequently, to wit, on or about the 22d day of March, A. D. 1875, the said defendants, Alexander R. Shepherd and Mary G. Shepherd, executed and delivered to the defendants, Andrew C. Bradley and William F. Mattingly, another deed conveying to them, their heirs and assigns, the real estate described in the next preceding paragraph of this bill, in trust, nevertheless, to se-
5 cure to the complainant ten thousand dollars ($10,000), money loaned by the complainant to the defendant, Alexander R. Shepherd, and for which sum the said Alexander R. Shepherd had made and delivered to the complainant his promissory note, dated the 22nd day of March, 1875, payable to the order of the complainant five years after date, with interest payable semi-annually at the rate of nine per centum per annum until paid, ten coupon notes of even date therewith and thereunto attached being given for the interest aforesaid and payable at the Farmers' and Mechanics' National Bank, Philadelphia, Pa., as will more fully appear by reference to said deed of trust, recorded in Liber No. 777, folio 489, &c., of the land records aforesaid, and which it is prayed may be taken and read as part of this bill.

4. Thereafter, to wit, on or about the 15th day of May,
6 1876, the defendants, Alexander R. Shepherd and Mary G. Shepherd, conveyed to the defendants, James E. Fitch and Lewis J. Davis, all that certain piece or parcel of ground situate and lying in the city of Washington, District of Columbia, and known and described upon the ground plat or plan of said city as lot numbered three (3), in A. R. Shepherd's subdivision of square numbered one hundred and sixty-four (164), said lot number three

(3) fronting forty-three feet and nine inches (43 ft. 9 in.) on K street N. W. and one hundred and nine feet and one-half inch (109 ft. ½ in.) on Connecticut avenue, as the same is recorded in the office of the surveyor of said city and District, in Liber Dr. W. B. Magruder, folio 171, in trust to secure the said defendant, Mercy Maria Carter Gray, by the name of Mercy Maria Carter, his promissory note of even date with said trust deed and due and payable three years after date, with interest thereon at the rate of nine
7 per centum per annum, payable quarterly, until paid, all of which will more fully and at large appear by reference to said deed of trust recorded in Liber 819, folio 290, of the land records for the District of Columbia, and which it is prayed may be taken and read as a part of this bill.

5. The complainant says that he is still the owner and holder of the promissory notes for $35,000 and $10,000 mentioned, respectively, in paragraphs No. 2 and No. 3 of this bill, and that said notes are both overdue, and that, in addition to the principal thereof due, there is due to the complainant interest thereon, as shown by the exhibit annexed to this bill, marked Exhibit G. S. P. No. 1, which also shows a statement of moneys advanced by complainant on account of taxes and insurance on the premises or real estate mentioned in said deeds of trust, and which, the defendant, A. R. Shepherd, having failed to pay as he was required to do by the
8 terms of said deeds of trust given to secure the complainant as aforesaid, the complainant has paid, and the amounts so paid as aforesaid the complainant alleges are secured by the said deeds of trust in accordance with the terms of said deeds and the agreements between complainant and said Shepherd.

And the complainant further states, upon information and belief, that the defendant, Mercy Maria Carter Gray, is still the holder of the said promissory note for $35,000 mentioned in the 4th paragraph of this bill; that the said note is overdue and that no part of the principal of said note has been paid, and that the interest is due thereon from the 15th day of May, 1877, at the rate of nine per centum per annum.

6. That the defendants, Alexander R. Shepherd and Mary G. Shepherd, his wife, on or about the 15th day of November, A. D. 1876, undertook to convey to George Taylor and Samuel Cross
9 and Henry A. Willard all his estate of every kind to secure his then existing unsecured creditors, and the property hereinbefore described as lot numbered three (3), in square numbered one hundred and sixty-four (164), was conveyed by that description by said Shepherd and wife, all of which will more fully appear by reference to the said deed, duly recorded in Liber 839, folio 226 *et seq.*, one of the land records of the District of Columbia, and a certified copy of which is annexed hereto and marked G. S. P. No. 3, and which it is prayed may be taken and read as a part of this bill.

6½. The parties claiming to be secured by said deed last named are very numerous, and cannot, without manifest inconvenience and oppressive delays, be all brought before the court. Accordingly the

defendants, John Alexander and George M. Barker, are made parties as representatives of said *cestuis que* —.

7. That, as this complainant is informed and believes, the
10 said Henry A. Willard refused to accept said trust mentioned in the last preceding paragraph of this bill, and that the other trustees, Taylor and Cross, claiming to act under the powers vested in them, appointed Peter Bacon to fill the vacancy occasioned by said Willard's refusal to act, as will more fully appear by reference to such appointment, recorded in Liber 839, folio 225 *et seq.*, of the land records of the District of Columbia, and which it is prayed may be taken and read as a part of this bill.

8. That subsequently, as the complainant is informed and believes, the said George Taylor declined to act as trustee, and the other trustees, Cross and Bacon, claiming to act under the powers vested in them, appointed the defendant, David L. Bartlett, to fill the vacancy occasioned by Taylor's refusal to act, as will more fully appear by reference to such appointment, duly recorded in
11 Liber 913, folio 346 *et seq.*, of the land records of the District of Columbia, to which reference is hereby made, and it is prayed that the same may be taken and read as a part hereof.

9. That on or about the 11th day of April, 1878, the complainant filed a bill in this court, being cause No. 6201 of the equity dockets, alleging the refusal of the defendant, Andrew C. Bradley, to comply with the complainant's request for him to proceed in connection with his co-trustee, William H. Philip, now deceased, to execute the trusts which had been reposed in him under the first of said deeds of trust held by complainant.

The case came on to be heard and a decree was passed as follows:

"This cause coming on to be heard and having been argued by counsel and considered by the court, it is, this 12th day of May, 1879, ordered, adjudged, and decreed that the plea and defence of usury be, and the same is hereby, overruled and disallowed, and that
12 James M. Johnston be, and he is hereby, appointed trustee in the place and stead of Andrew C. Bradley in the deed of trust recorded in Liber —, folio —, of the land records of the District of Columbia and referred to in the record in this cause. This decree is without prejudice to all other rights of the defendant."

By the court:

MACARTHUR, *Justice.*

That on the 14th day of May, 1879, the defendant, A. R. Shepherd, entered an appeal from this decree to the court in general term.

That, no supersedeas bond having been filed, a sale of the property was advertised by the defendants, Philip & Johnston, trustees, to take place under the first of the said deeds of trust given to secure the complainant and under the said decree of May 12, 1879. On the 24th day of July, 1879, the said Alexander R. Shepherd, by the defendant, Andrew C. Bradley, his attorney-in-fact, filed a
13 petition in said cause alleging that the act of said defendant Johnston in advertising the said real estate for sale under the

first of said deeds of trust to wit, that recorded in Liber 754, folio 51 *et seq.*, of the said land records, was entirely without authority, and that the said Johnston had no power to act in the premises inasmuch as the said decree did not vest in him the title, powers, and trusts under which the said land and premises were so advertised for sale. On the 6th day of September, 1879, the prayer of this petition was denied.

10. The sale of the real estate, as described in said deed of trust recorded in Liber 754, folio 51 *et seq.*, was, at the direction of this complainant, made on the 23rd day of October, 1879, by the said William H. Philip, one of the original trustees therein named, and the defendant, James M. Johnston, who before that *he* had been substituted in the place of said defendant Bradley, as aforesaid;

14 and on the 14th day of November, 1879, the said defendant, Alexander R. Shepherd, first having dismissed his appeal taken from the decree in cause 6201 aforesaid, filed a bill attacking the said sale, because, among other reasons, the acts of said Johnston and Philip were entirely without authority, as Johnston was not constituted trustee by the deed of trust under which the sale took place, and the decree did not vest in him any title, trusts, or powers under said trust nor substitute him in the place of Bradley nor divest him of his powers. The prayers of the bill were that the sale should be set aside and the deed canceled; that the defendants should be enjoined from interfering with the property or enforcing any right claimed therein, and for general relief; all of which will appear by reference to cause 7052 of the equity docket of this court.

15 Answers and a cross-bill were duly filed to said bill, and a decree was entered in said cause on the 30th day of October, 1880, dismissing the bill, and the justice rendering said decree stated, by his opinion subsequently filed in that cause, a copy of which opinion (taken from the record prepared by defendant's, A. R. Shepherd's, counsel on appeal to the general term in = 7052, equity) is hereto annexed, marked Exhibit G. S. P., No. 2, and which it is prayed may be read as part of this bill, that the decree passed in equity cause 6201, substituting the defendant Johnson as trustee in the place of the defendant Bradley, was inoperative and void for uncertainty, and that the alleged title of this complainant, derived through the defendant Johnson as substituted trustee, was not a cloud on the title of the said defendant, Alexander R. Shepherd, and that the bill was therefore dismissed for want of jurisdiction to grant the relief prayed.

16 The complainant says that subsequently, to wit, on or about the 17th day of June, 1881, the said opinion was by the court in general — ordered to be stricken from the files of said cause 7052, equity, but complainant states that he is advised that it is competent to show at any time the grounds upon which said decree was placed by the opinion of the court, and that, as it appears by the said opinion of the court that the said decree did not give to the said Johnston any power to sell, said decree was, in effect, an adjudication upon and favorable to the averments in said Shepherd's bill of complaint in said court that said sale was made without au-

thority and the deed of said Philip and Johnston was null and void, and as the said Shepherd has always averred and insisted that said decree was void and said sale a nullity, and to the end that said lot 3 of said Shepherd's subdivision may be sold as a whole, the complainant files this bill in order that an undisputed title to the whole property may be obtained by means of foreclosure pro-
17 ceedings under the order and decree of this court.

12. That the lot numbered three (3), in A. R. Shepherd's subdivision of square one hundred and sixty-four (164), fronting forty-three feet nine inches (43 ft. 9 in.) on K street N. W. and one hundred and nine feet and one-half inch (109 ft. ½ in.) on Connecticut avenue, as the same is recorded in the office of the surveyor of the city of Washington aforesaid in Liber Dr. W. B. Magruder, folio 171, being the property described in the said deed of trust given by the defendant, Alexander R. Shepherd, to secure the loan made to him by the defendant, Mercy Maria Carter Gray, is improved by a handsome and expensive dwelling-house erected by the defendant, Alexander R. Shepherd, thereon; that the portion of said lot 3 contained in the descriptive clauses of the deeds of trusts aforesaid given by said defendant to secure the sums loaned to him by
18 this complainant does not embrace all the ground covered by and appurtenant to the said dwelling-house, the portion of ground omitted from the deeds of trust given to secure the complainant being a lot designated as A and fronting about 28 feet 2½ inches on Connecticut avenue and running back with that width.

The complainant says that the omission of said strip of ground from the deeds of trust given to secure him as aforesaid was either by accident or fraud on the part of said Alexander R. Shepherd or his agents, and that in either case complainant is entitled to have the description of said ground in said deeds given to secure him corrected so as to include said strip, as will be hereinafter mentioned.

13. Complainant states that by his agreement with said Shepherd it was provided that said Shepherd should grant to trustees to secure complainant all of the real estate covered by his residence on
19 the southeast corner of K street and Connecticut avenue, and all the property to be used as appurtenant and connected therewith, and all of which he now finds is designated on the plat books of the city as lot 3 of said Shepherd's subdivision of square 164.

Relying upon the fact that the first deed of trust embraced all the said property—*i. e.*, the property now described as sub-lot 3, in square 164—complainant agreed to make a second loan on the same property, and therefore the second deed of trust was executed as now found; and relying upon the belief that both of the deeds of trust to secure him, hereinbefore referred to and described, embraced all of the real estate used or to be used by said Shepherd for his residence and the appurtenance thereto, he advanced $35,000 at one time and $10,000 at another time, and thereby fully performed all that he agreed to do and perform; and complainant further
20 says that he relied upon said deeds of trust as his security

for his loans, believing that said deeds conformed to his contracts with said Shepherd and embraced all the real estate owned at that point by Shepherd and embraced all the land covered by said house and appurtenant thereto, and complainant says that he would not have loaned any money to said Shepherd if he had known that said deeds did not embrace all of said real estate and the improvements made or to be made at that point by said Shepherd, with the yard now belonging thereto.

But complainant discovered long after the execution of said deeds and the advance of said $45,000 thereon that lot A, which constitutes the rear 28 ft. 2½ inches of said sub-lot 3, square 164, was omitted entirely from said deeds, thereby cutting off a portion of the improvements and thereby seriously impairing complainant's security, making the same grossly inadequate and causing
21 him irreparable injury. Complainant was and is of opinion and so charges that, notwithstanding the distinct understanding between Shepherd and himself, the said omissions were made by the fraud of said Shepherd or his agents and without any suspicion of the omission on complainant's part and in fraud of his rights; but said Shepherd says that he fully intended to embrace all the said real estate (*i. e.*, both lots now constituting lot 3) in the two said deeds of trust to secure complainant, and executed said deeds with the belief that all of said property was so included, but that the omission to include all of said real estate was due to accident or mistake on the part of himself or his agents who prepared said deeds, and entirely without fraud on his or their part.

14. Complainant is informed and believes and avers that it was well understood by said Mercy Maria Carter Gray, when and before she loaned the sum of $35,000 to said Shepherd, that the
22 two prior deeds of trust in favor of complainant constituted prior liens on all the real estate embraced in the deed of *of* trust to secure her (*i. e.*, lot 3, square 164), and that she made said loan with the belief on her part that both of said prior deeds of trust actually embraced all of said real estate and on the belief that complainant and said Shepherd understood that all of said lots were so embraced, and that said Mercy Maria Carter Gray had actual notice that complainant and Shepherd fully intended to embrace in the first and second deeds of trust all the real estate embraced in the third deed of trust in her favor.

Wherefore complainant is advised and charges that his lien under the two deeds of trust is complete and paramount to that of said Gray as to all the real estate referred to in said Gray's deed of trust and ought to be enforced either by reforming said deeds in
23 Liber 754, F. 51, and Liber 777, F. 489, by including therein all of said real estate which is embraced in said Gray's deed, or by enforcing complainant's lien on said lot as an equitable mortgage prior to any rights of said Gray therein by reason of the premises.

14½. Complainant states that long after he had advanced the two said loans of $35,000 and $10,000 to the defendant, Alexander R. Shepherd, on the belief that his deeds of trust embraced all the prop-

erty now described as lot 3 of Shepherd's subdivision of square 164, and having relied on the belief that said Shepherd had a perfect title to all of said lot 3, he learned for the first time that said Shepherd had, when he executed the said deeds of trust, only a tax title to sub-lot A, square 164, on which a portion of the improvements stand-; but complainant is informed and believes and so avers that said Shepherd has, since said loans to him, perfected his title
24 to said sub-lot A by buying in all adverse claims, and that he has paid the money therefor from his own means. Complainant is further informed and believes and avers that said sub-lot A was either conveyed to said Shepherd or to some friend as trustee for him, in either of which cases complainant is advised that said perfected title will enure to the benefit of complainant and the defendant Gray, the incumbrancers thereon.

As said deed has been withheld from record in fraud of incumbrances, complainant does not positively know the name of the nominal grantee in said deed and calls on the defendant, Alexander R. Shepherd, to discover and make known the same.

15. Complainant further alleges that no portion of the principal sums of $35,000 or $10,000 due to complainant as aforesaid has been at any time paid to complainant, and that no portion of the
25 principal sum of $35,000 due to the defendant, Mercy Maria Carter Gray, has been paid, as complainant *in* informed and believes; that no interest has been paid to complainant since September, 1876, on one loan, and June, 1876, on the other, now five years, and complainant is informed and believes and avers that no portion of the interest due to said Gray has been paid since May 15th, 1877; that no one except complainant has paid any insurance on said improvements since prior to April 2, 1878, although said Shepherd by his said deeds contracted to pay the same, and complainant has expended on account of insurance the sum of $567.50; that said Shepherd has not paid any general or special taxes on said real estate since the year 1876, although by said deeds he contracted to pay all the taxes on said real estate, and although by reason of the non-payment of said taxes and the consequent tax sales
26 there is great danger of a title paramount and hostile to that of all the parties to this cause being acquired by strangers.

And said Shepherd has utterly failed to pay the said annually accruing charges of taxes, interest, and insurance, although he has been receiving from prompt tenants for several years past, as rent for said premises and the furniture therein, the sum of $6,000 per annum, which sum he has appropriated to his own use, in utter disregard of complainant's claims and rights to the premises; and complainant is informed and believes that said Shepherd intends to continue to thus divert and misappropriate the entire gross income derived from said premises and thus forever place said income beyond recovery of complainant, as he has already done as to the rents received.

16. And complainant avers that the existing specific incumbrances on said real estate in favor of complainant and the
27 defendant Gray, together with arrears of taxes, now amount to about one hundred and twenty thousand dollars and are

rapidly increasing, at the rate of about nine thousand dollars per annum; and complainant says that said real estate is an utterly inadequate security for the large sums now charged upon it, and that said real estate cannot be sold for a sum sufficient to meet even the existing liens thereon, nor will it yield from rents an adequate income on the sum now charged upon it.

And complainant further avers, on information and belief, that said Shepherd is utterly insolvent; that there are unsatisfied judgments of record against him in this court, besides unsecured debts of a very large amount, estimated by said Shepherd to be $310,000, as complainant is informed and believes.

And complainant avers that said Shepherd is both un-
28 willing and unable to make good the deficiency due to complainant after properly applying the net proceeds of the sale of the property pledged as aforesaid.

17. To prevent all misunderstanding or misconception of the scope, object, or language of this bill the complainant herein disclaims any intention to in anywise or in any manner do or say anything to effect his excellency the Chinese minister, who is now the tenant in actual occupation of the said premises. Complainant is informed and believes and therefore states that the said minister will be pleased to respect any order of this court relating to the appropriation of the rents of said property during his occupation thereof, and to pay said rent to any person whom the court may appoint to receive it.

18. Complainant avers, on information and belief, that said Bradley positively refused to sell the property vested in him
29 as trustee under the deed recorded in Liber 754, folio 51, and has never since said refusal expressed any willingness to sell said property, but, on the contrary, has endeavored to delay and prevent the sale of the same. Said Philip was always during his lifetime ready and willing to sell said property under said deed of trust to him.

Therefore in view of the presents and inasmuch as complainant is otherwise remediless he prays as follows:

1. That a receiver may be appointed to receive the rents now due and hereafter to become due for lot 3 of said Shepherd's subdivision of square 164 hereinbefore referred to, and the improvements thereon, and to hold the same subject to the further order of this court.

2. That a trustee or trustees may be appointed by this court to sell the whole of lot 3, in A. R. Shepherd's subdivision
30 of square numbered 164, with the improvements thereon.

3. That said rents mentioned in the first prayer and the proceeds of sale of the whole of said lot 3, in square 164, be first applied to the payment and discharge of said Shepherd's indebtedness to complainant hereinbefore particularly set out, together with all interest, costs, charges, and expenses due to complainant by reason of the premises.

4. That writs of subpœna may issue to the defendants commanding them and each of them to appear and answer the exigencies of this bill.

5. That your complainant may have such other and further relief as to this honorable court may seem proper, the premises considered.

6. That said Alexander R. Shepherd may discover and set out in his answer the name of the present holder of the legal
31 title to said sub-lot A, in square 164.

7. That said Shepherd, his servants, agents, and attorneys, may be enjoined and restrained from collecting, receiving, or disposing of, directly or indirectly, any portion of the rent already paid or to become due for said sub-lot 3, in square 164, and the improvements thereon, or from transferring or assigning any rents now due or hereafter to become due.

The defendants to this bill are Alexander R. Shepherd, Mary E. Shepherd, Mercy Maria Carter Gray, James E. Fitch, Lewis J. Davis, Andrew C. Bradley, Wm. F. Mattingly, James M. Johnston, David L. Bartlett, Peter Bacon, Samuel Cross, John Alexander, and George M. Parker.

George S. Pepper, being duly sworn, deposes and says that he is the complainant in the above cause; that he has read
32 the aforegoing bill by him subscribed and knows the contents thereof; that the matters and things therein stated of his own knowledge are true, and those facts stated on information and belief he believes to be true.

GEO. S. PEPPER.

NATHANIEL WILSON,
HANNA & JOHNSTON,
Compl'ts Sol'rs.

Sworn and subscribed to before me this sixteenth day of July, A. D. 1881.

[SEAL.] CHAS. MATTHEWS, JR.,
Notary Public.

Witness:

JOSEPH NORRIS.

33 EXHIBIT G. S. P. No. 1.

Statement of Am't of Taxes Paid on Shepherd's House.

Nov. 5, 1879	2,564 66	Int. to July 18th, 9%	393 07
" 10, "	3,066 41	" " "	466 01
" 25, "	39 80	" " "	5 93
Dec. 1, "	715 57	" " "	105 22
	6,386 44		970 23

Statement of Am't Paid for Insurance on Shepherd's House.

April 2, 1878	55 00	Int. to July 18, at 9%			16 28
June 21, "	62 50	" " "			17 15
" 25, "	75 00	" " "			20 67
April 9, 1879	50 00	" " "			10 22
June 11, "	75 00	" " "			14 18
Nov. 6, "	100 00	" " "			15 27
June 1, 1880	75 00	" " "			7 58
June 2, 1881	75 00	" " "			82
	567 50				102 17

35,000 00	Prin.		
16,170 00	9% int.	54,548 55	Loan & int.
3,378 55	9% int. on int.	15,186 45	" "
54,548 55		6,386 44	Taxes.
		970 23	Int. on taxes.
		567 50	Insurance.
10,000 00	Prin.	102 17	Int. on insurance.
4,340 00	Int.	77,761 34	
846 45	Int. on int.		
15,186 45			

34 Interest on $35,000, at 9%, from June 1st, 1876, to July 18th, 1881.

		Int. on int. at 9%.
1876, Dec. 1. 6 mos. int.	1,575 00	656 77
1877, June 1. " "	1,575 00	585 90
" Dec. 1. " "	1,575 00	515 03
1878, June 1. " "	1,575 00	444 16
" Dec. 1. " "	1,575 00	373 29
1879, June 1. " "	1,575 00	302 42
" Dec. 1. " "	1,575 00	231 55
1880, June 1. " "	1,575 00	160 68
" Dec. 1. " "	1,575 00	89 81
1881, June 1. " "	1,575 00	18 94
" July 18. 1 mo. 18 d'ys	420 00	3,378 55
	16,170 00	

Interest on $10,000, at 9%, from Sept. 22d, 1876, to July 18th, 1881.

		Int. on int. at 9%.
1877, Mar. 22. 6 mos. int.	450 00	175 05
" Sept. 22. " "	450 00	154 80
1878, Mar. 22. " "	450 00	134 55
" Sept. 22. " "	450 00	114 30
1879, Mar. 22. " "	450 00	94 05
" Sept. 22. " "	450 00	73 80
1880, Mar. 22. " "	450 00	53 55
" Sept. 22. " "	450 00	33 30
1881, Mar. 22. " "	450 00	13 05
" July 18. 3 mos. & 26 d'ys	290 00	846 45
	4,340 00	

35 EXHIBIT G. S. P. No. 2.

Opinion.

I am of opinion that the decree in question in this case is inoperative and void for uncertainty. It purports to substitute a trustee in one of two deeds mentioned in the pleadings without designating which of them. It is true that it can be inferred from the comparative effects of the substitution in the one or the other case that the court was not likely to intend to substitute Mr. Johnston for Mr. Bradley in the deed which conveyed only an equitable title, but I do not think that I am at liberty to explain and give certainty to the decree by reference to such considerations. It has been suggested that a decree may be explained by reference to the pleadings on which it is based, and this undoubtedly may be done in a proper case, but I do not find that the uncertainty of the decree in
36 this case can be cleared up in that way. It follows that if the decree is uncertain on its face the alleged title of Pepper, through Mr. Johnston as substituted trustee, is not a cloud upon the title of the complainant, and consequently this court cannot take jurisdiction to grant the relief prayed. Therefore the decree must be that the bill be dismissed.

JAMES, *J.*

EXHIBIT G. S. P. No. 3.

Copy. Liber 839, folio 226.

ALEX R. SHEPHERD *et ux.* to GEORGE TAYLOR *et al.* } Trust. Recorded December 8th, 1876, 2.30 p. m.

This indenture, made this 15th day of November, in the year eighteen hundred and seventy-six (1876), by and between Alexander R. Shepherd and Mary G. Shepherd, his wife, of the city of Washington, District of Columbia, of the first part, and George
37 Taylor, Henry A. Willard, and Samuel Cross, of the same place, of the second part, —: Whereas the said Alexander R. Shepherd is indebted to divers persons in divers sums of money and is desirous to secure the payment thereof by a conveyance of his property and effects for that purpose; and whereas his unsecured debts, so far as the same are known to him at this time, amount to about the sum of three hundred and ten thousand dollars ($310,000);

And whereas, in order that said unsecured creditors may have their evidences of indebtedness in a marketable shape, and for the purpose of this trust he has executed his certain promissory notes, bearing even date with these presents, each for the sum of one hundred dollars ($100) and payable five years after date, with interest coupons attached at the rate of six per cent., payable semi-annually after the expiration of the first year, said notes being equal
38 in amount to the amount of his unsecured indebtedness, be the same more or less than said sum of $310,000, and being

payable solely out of the proceeds of the property included in and conveyed by these presents; and whereas the said parties of the first part are desirous to secure the payment of said notes and coupons when and as the same shall become due and payable, they therefore execute these presents. Now, therefore, this indenture witnesseth: That the said parties of the first part, for and in consideration of the premises and the sum of five dollars to them in hand paid by the said parties of the second part at the time of the execution and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained and sold, conveyed, assigned, transferred, and set over, and by these presents do grant, bargain and sell, convey, assign, transfer, and set over, unto the said
39 parties of the second part and the survivors and survivor of them, his heirs, executors, administrators, and assigns, all and singular the lands, tenements, hereditaments, and appurtenances, stock, promissory notes, debts, choses in action, claims, demands, property, and effects of every description, fully and particularly enumerated and described in schedule thereof, hereto annexed, marked Schedule "A," the same being and intended to be all the property and estate of every kind whatsoever of him, the said Alexander R. Shepherd, except his interests in the assets of the firm of A. R. Shepherd & Co.:

To have and to hold the property aforesaid, of whatsoever kind, hereby conveyed or intended so to be, and every part and parcel thereof, with the appurtenances, unto the said parties of the second part and the survivors and survivor of them, his heirs, executors, administrators, and assigns, in trust, nevertheless, to and for
40 the uses and purposes following, to wit: In trust to suffer and permit the said Alexander R. Shepherd to remain in the possession and receive the rents and profits thereof until default be made in the payment of said promissory notes or any of said interest coupons; and upon the full payment of said promissory notes, with all interest, costs, and expenses, to release and reconvey all and singular the property aforesaid or so much thereof as may be undisposed of unto the said Alexander R. Shepherd, his heirs, executors, administrators, and assigns; but should default be made in the payment of said promissory notes or of any of said interest coupons, then the said parties of the second part, the survivors or survivor of them, are hereby empowered and upon the request of the holder of any of said notes or interest coupons it shall be their or his duty to sell said property at public auction at such
41 time and place and upon such terms and after such public advertisement as they or he shall deem for the best interest of all parties concerned, and shall convey the property sold to the purchaser thereof in fee simple, without any liability to see to the application of the purchase-money, and out of the proceeds of said sale or sales, first, to pay all proper costs, charges, and expenses, and to retain as compensation a commission of three per cent. on the amount of said sale or sales; secondly, to apply said purchase-money to the payment of whatever may then remain unpaid of the said notes and interest coupons to the time of said sale, whether the

said notes shall be due or not; and, lastly, to pay the remainder, if any, to the said Alexander R. Shepherd, his heirs or assigns; and upon this further trust, to make all such conveyances and
42 transfers of said property or any portion thereof as may be required to make by the said Alexander R. Shepherd for the purpose of perfecting and carrying out any settlement, sale, or exchange which the said Shepherd may make for the benefit of the creditors secured hereby. The said promissory notes to the amount aforesaid and all such other promissory notes as aforesaid as it may be hereafter necessary to issue to provide for such other unsecured debts of the said Alexander R. Shepherd, as during the existence of this trust may be ascertained to have been created prior to the execution and delivery of these presents, shall be countersigned by said trustees, who shall keep a true and accurate account thereof, and the said Alexander R. Shepherd shall deliver the same to the said creditors in amounts equal to the amounts due them respectively, all differences in amounts by reason of uneven sums to be mutually arranged between the creditors, respectively, and the
43 said Shepherd. Said creditors are specified in Schedule B, hereto annexed, and the presents are executed upon this condition, that all the creditors of the said Alexander R. Shepherd whose debts are unsecured shall sign these presents and thereby consent thereto, and by signing the same said creditors do hereby agree to accept said promissory notes as aforesaid in full satisfaction of their respective claims, and do further release the said Alexander R. Shepherd from said indebtedness and from all claims and demands whatsoever.

And the said Alexander R. Shepherd does hereby covenant with the said parties of the second part, the survivors and survivor of them, for the use and benefit of the holders of the notes aforesaid secured hereby, that all the property conveyed by these presents and all the rents, issues, profits, and proceeds thereof which shall come into his hands shall be used, managed, and applied by
44 him solely for the interest, benefit, and advantage of the holders of the notes aforesaid, and that the said parties of the first part shall and will make all such other and further assurances in law as may be deemed requisite and necessary by the said parties of the second part for the purpose of carrying out the true intent and meaning of these presents at any time. In case of the death, removal from the District, resignation, or refusal to act or to accept the trust of either of the said parties of the second part or of any trustee thereunder, hereafter substituted, the other party or parties may fill the vacancy from time to time as the same may be necessary by any instrument of writing under his or their hands and seals, duly acknowledged and recorded in the land records of the District of Columbia.

And the parties thus appointed shall be vested with the
45 same interest and estate in the property conveyed hereby and clothed with the same powers and duties as though expressly named herein as the parties of the second part.

In testimony whereof the said parties of the first part have here-

unto set their hands and affixed their seals on the day and year first hereinbefore mentioned.

ALEX. R. SHEPHERD. [SEAL.]
MARY G. SHEPHERD. [SEAL.]

Witness:
D. R. BELL.

We do hereby accept the foregoing trust.

GEO. TAYLOR.
SAM. CROSS.

Witness:
D. R. BELL.

DISTRICT OF COLUMBIA, *To wit:*

I, D. R. Bell, a notary public in and for the District aforesaid, do hereby certify that Alexander R. Shepherd and Mary G. Shepherd, his wife, parties to a certain deed bearing date on the fifteenth day of November, A. D. 1876, and hereto annexed, personally ap-
46 peared before me in said District, they being personally well known to me to be the persons who executed said deed, and the said Alexander R. Shepherd acknowledged the same to be his act and deed; and the said Mary G. Shepherd, being examined by me privily and apart from her husband and having the deed aforesaid fully explained to her, acknowledged the same to be her act and deed and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and official seal this fifteenth day of November, A. D. 1876.

D. R. BELL, [NOTARIAL SEAL.]
Notary Public.

Schedule Assets A, Encumbered.

Sqr.	Lots.	Sqr.	Lots.	Sqr.	Lots.			
101	37	322	C	374	Of 7	673	12	
164	B	------	D	----------	" 9	Unfinished house on 10th street.	13	
163	33	------	E	462	47		14	
	34	323	1	----------	46		15	
	35	------	2	----------	45		16	
	37	377	4	W. 623	19		17	
47								
164	3	378	26	----------	20		20	
	24	------	Sub. 26	673	1		21	
	25	------	27	----------	2		22	
	12	------	28	----------	3		23	
	18	------	29	----------	4		24	
218	62	------	30	----------	5	43	1	Georgetown.
	63	------	31	----------	6	-----	2	"
	64	------	E. ½ of W. ½ 2	----------	7			
287	B	380	D	----------	8			
	C	374	Of 8 & 9	933, 937, &	9	Bleak House, dwelling, &c., country seat, 53.22 acres.		
			" 8 & 9	941 H St.	10			

Schedule Assets A, Unencumbered.

Sqr.	Lot.	Sqr.	Lot.	Sqr.	Lot.	Sqr.	Lot.	Sqr.	Lot.	Sqr.	Lot
5	Of C	E. 88	22	E. 88	47	557	22	1040	4	1083	10
36	19	------	23	------	48	------	23	------	5	--------	11
40	10	------	24	------	49	673	11	------	6	1108	2
58	5	------	25	------	50	------	16	1042	7	--------	3
	6	------	26	------	51	------	------	------	8	--------	4
	7	------	27	------	52	675	241	------	9	--------	14
	8	------	28	------	53	------	242	------	10	--------	15
E. 88	54	------	29	------	54	------	243	------	11	--------	16
	5	------	30	------	55	------	244	------	12	--------	17
	6	------	31	------	56	------	6 ft. of 245	------	13	--------	18
	7	------	32	------	57	891	18	------	14	--------	19
	8	------	33	104	13	------	19	------	15	--------	20
	9	------	34	173	13	------	20	------	16		
										98 Georgetown.	2
48	10	------	35	------	14	------	21	------	17		
	11	------	36	------	15	------	22	------	18		
	12	------	37	------	20	------	23	------	19		
	13	------	38	------	21	------	24	------	20		
	14	------	39	442	46	------	25	------	21		
	15	------	40	509	Int.	940	15	------	22		
	16	------	41	557	16	------	16	------	23		
	17	------	42	------	17	------	17	1083	3		
	18	------	43	------	18	------	18	------	5		
	19	------	44	------	19	968 1040	1 1	------	6		
	20	------	45	------	20	------	2	------	8		
	21	------	46	------	21	------	3	------	9		

Country-Seat Farm, 212 Acres, 7th-St. Road, District of Columbia.

Lots.			Description.
1	Shepherd's subdivision	----	33 lots, Patterson, N. J., numbered 567 to 577, 558 to 582, and 923 to 937.
2	" "		
3	" "		
5	" "	----	140 acres, Prince George Co., Md.
6	" "		
7	" "	----	1,600 acres, Westmoreland Co., Va.
9	" "	----	Personal property.
10	" "	----	Furniture in house No. 1019 Conn. Ave.
11	" "	----	Furniture in house No. 1023 Conn. Ave.
12	" "		
49			
13	" "	----	Furniture in house No. 1705 K St.
14	" "		
15	" "	----	Stock in farm.
16	" "		
17	" "	----	1 share, Isherwood farm.
A	" "	----	2 Citizens' B'ld'g Asso.
B	" "	----	16 Wash. Club stock.
C	" "	----	Stock, Young Men's Christian Association, $4,000, par value.
D	" "		
E	" "	----	Stock, Am. Dist. Telegraph Co.
F	" "	----	Vaux Roofing Co.
G	" "	----	Potomac Mills Cement Co.
H	" "	----	Judgment *vs.* Chronicle Publishing Co. ($4,700).
I	" "	----	Court Claims on E-St. property ($6,000).

SCHEDULE "B."

Schedule of Creditors.

Ansonia Brass & Copper Co.
Alexander, John.
Acker, N., & Son.
Boynton, S. C.
Bartlett, Robbins & Co.
Bruce & Cook.
Barker, Geo. M.
Bartlett, L. A.
Blackford, B. L.
Babcock, O. E.
Boyd, Rob't.
Baker, Arnold & Co.
Bymer, Bauman & Co.
Byrd, E. A.
Beverage, D. W.
Birch, Henry.
Crawford & Hoffman.
Cross, Sam'l.
Clephane, Lewis.
Childs, J. P., & Co.
Columbian Bank Note Co.
Clark, N. B.
Cook, H. D., Jr., & Co.
Clark & Given.
Carr, Wm. S., & Co.
Connolly, D. A.
Crossfield, Geo. R.
Connor, Woolley & Co.
Cook, J. J., trustee.
Clapp, A, M.
Collins, J. F.
Coe, E.
Cook, W. A.
Dumbeller, S. P.
Dearing & Johnson.
Dwight, Geo. W., & Co.

Downman & Green.
Emmart, Lloyd W.
Evans, John O.
Fugitt, N. B.
Fisher, Thos. J.
Filbert, L. S.
Flagg, Stanley G., & Co.
Godey, Mrs. W. H.
Gray & Noyes.
Gettier, H. L.
Hume, Thos. L.
Hayden, Geer & Co.
Hill, G. W.
Hutchinson, H. M.
Hebner, M.
Huntley, Geo., & Co.
Hoffman, L. M.
Jones, Frank.
Joyce, Thomas.
Kilbourne, H.
Kelly, Moses.
Kirby, Thomas.
Libbey, J. & J. E.
Lewis, Thomas.
Morsell & Dearing.
Murdock, W. C.
McGregor, John.
51 Moore, J. C.
Morgan, E. F., president.
May, F. P., & Co.
McGowan, M. A., & Co.
McGill & Witherow.
Mitchell, John T.
Montgomery, Jas. H.
Otto Dunker & Co.
O'Hare, Owen.
Pottier & Stymers.
Phœnix Iron Co.
Plowman, Thos. M.
Proctor & Morrow.
Parker & Sons, "workmen."
Rollhause, P., Jr.
Robinson Bros. & Co.
Ridenour, M. H.
Robinson Bros.
Riley, Thos. W., & Son.
Reuter & Mallory.
Shepherd, Thos. M.
Second National Bank.
Smith, Daniel.
Sissen, Hugh, & Sons.
Spaulding, W. E., & Son.
Shinn, R. A.
Shoemaker & Hertzog.
Sanger, W. P.
Shepherd, A. R., treasurer.
Smith, Burge & Co.
Schneider, C. A.
Schneider, C.
Tucker Man'f. Ag. Co.
Timmey, Timothy.
Thompson, J. W.
Towles, H. O.
Talty, Stephens.
Turton, Jas. E.
Van Riswick, John.
Van Buskirk, J. M.
Willard, H. A.
Wright, G. M.
Waters, J. G.
Williams, Joseph.
Whyte & Overman.
Walter Bros.
Watts, Geo., & Co.
Windsor & Ford.
Wall, William.
West, W. H., & Bro.
Washington Brick Machine Co.
Williams, Gen'l Robert.
Young, S. G. (administrator).

Copy.

Fee, $5.00. Paid.

This is to certify that the within is a true and verified copy of a deed, as recorded in Liber No. 839, folio 226 *et seq.*, one of the land records for the District of Columbia.

Washington, D. C., May 31st, 1880.

[SEAL.]

GEO. F. SCHAYER,
Dep. Recorder.

52 *Restraining Order. Filed July 20, 1881.*

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
ALEXANDER R. SHEPHERD *et al.* } In Equity. No. 7803.

On motion of complainant's solicitors, it is by the court, this 20th day of July, 1881, ordered that the defendant, Alexander Shepherd, and his servants, agents, and attorneys and each of them be enjoined and restrained from collecting or receiving, directly or indirectly, any portion of the rent due or to become due for the use and occupation of the subdivision lot numbered three, in square numbered one hundred and sixty-four, and the improvements thereon (referred to in the bill in this cause), or from in any way assigning, transferring, or otherwise disposing of any rents heretofore collected or that may be hereafter collected by him or them from said premises until the further order of this court.

Hearing is fixed for the 6th day of September, 1881, on the motion of complainant for permanent injunction & the appointment of a receiver.

By the court: A. WYLIE.

53 Issued July 20, 1881; returned Aug. 18, 1881.

In the Supreme Court of the District of Columbia, July 20th, 1881.

GEORGE S. PEPPER, Complainant,
against
A. R. SHEPHERD *et al.*, Defendants, } No. 7803. Equity Docket 21.

The President of the United States to Alexander R. Shepherd and wife, Mary G. Shepherd, Mercy Maria Carter Gray, James E. Fitch, Andrew C. Bradley, William F. Mattingly, James M. Johnston, Daniel L. Bartlett, Peter Bacon, Samuel Cross, John Alexander, and George M. Barker, defendants:

You are hereby commanded to appear in this court at its first special term, occurring twenty days after service of this subpœna, and answer the exigency of the original bill under pain of attachment and such other process of contempt as the court shall award.

Witness D. K. Cartter, chief justice.

R. J. MEIGS, *Clerk, &c.*,
[SEAL.] By R. J. MEIGS, JR., *Ass't Clerk.*

54 *Marshal's Return.*

Not to be found, A. R. Shepherd & wife, David L. Bartlett, & Mercy M. C. Gray, and summoned & served injunction on A. C. Bradley & Wm. F. Mattingly, and summoned all the others.

July 22, 1881.

C. E. HENRY, *Marshal.*

Affidavit of Stevens. Filed Sep. 6, 1881.

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
A. R. SHEPHERD *et al.* } No. 7803.

I, Joseph T. Stevens, do swear that I have had intimate personal and business relations with Alexander R. Shepherd during the past two years; that I have thus become well posted as to his mining operations in Mexico; that from my knowledge of his affairs I firmly believe that at this time he is a man of considerable wealth over and above his indebtedness. The condition of his investments is such that to withdraw a sufficient amount at this time to pay off his in-
55 debtedness would subject him to heavy loss. During the past two years he has paid off a considerable amount of his indebtedness, and I believe within one year will pay off all he owes. In making this statement I have not placed a speculative value upon his mining properties.

JOSEPH T. STEVENS.

Subscribed and sworn to before me this sixth day of September, A. D. 1881.

[SEAL.] DANIEL O'C. CALLAGHAN,
Notary Public.

Answer of A. C. Bradley. Filed Oct. 5, 1881.

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
ALEXANDER R. SHEPHERD *et al.* } No. 7803. Eq. Doc. 21.

The separate answer of Andrew C. Bradley, one of the defendants, to the bill of complaint of the above-named plaintiff.

In answer to said bill of complaint I say as follows:

56 1. I admit that the plaintiff and the defendants, except Alexander R. Shepherd, Mary G. Shepherd, and David L. Bartlett, reside as charged, and say that said Shepherd and wife are only temporarily residing in Mexico, and that they intend to return to the District of Columbia, and that said David L. Bartlett resides in the city of Baltimore, State of Maryland.

2. I admit that said Shepherd and wife executed the deed of trust to me and to William H. Philip, as charged, and that said William H. Philip is now dead, and that said Shepherd executed the said notes as charged.

3. I admit the allegations of the 3d paragraph of the bill.

4. I admit the allegations of the 4th paragraph of the bill.

5. I do not know and therefore do not admit the allegations of the 5th paragraph, except that I am informed and believe that the plaintiff and the defendant Gray are the holders of the respective notes, and therefore admit it.

57 6. I admit that said Shepherd and wife executed the deed of trust as charged in this paragraph of the bill.

6½. I admit that the parties secured under the deed of trust mentioned in paragraph 6 are numerous, but I am informed and believe, and so aver, that most of them have been paid, and that both John Alexander and George M. Barker have been paid, and that the number of those who hold unsettled claims is few.

7. I admit the allegations of the 7th paragraph.

8. I admit the allegations of the 8th paragraph, except that I am informed and believe it to be true and therefore aver that the said George Taylor was requested to resign by said Shepherd, and that he did not decline to act as trustee.

9. I admit that the plaintiff filed a bill in equity, being cause No. 6201, equity, and that the decree recited was rendered therein

58 and an appeal taken therefrom to the court in general term by the defendant Shepherd; that said Philip and Johnston, trustees, advertised the property for sale, and that a petition was filed in said cause, signed in behalf of said Shepherd by me as his attorney-in-fact, but I deny that the plaintiff has correctly stated the allegations of the bill of complaint or the proceedings in said cause in so far as he has pretended to state them, as will appear by said bill and other proceedings in said cause, which I pray may be read and considered as part of this my answer, and say that the allegation of the 10th paragraph of said bill is as follows: That "he did in writing order and request the trustees under said deeds of trust (to secure him)," meaning the two deeds of trust referred to in this bill, "to advertise said real estate for sale, but that said defendant, Andrew C. Bradley, one of the trustees under both of said deeds of trust, refused so to do," and that said bill prayed "that a

59 trustee be, by order of this honorable court, appointed in place and stead of the trustees under said deeds of trust first mentioned, with directions and authority to forthwith execute all the trusts reposed in them, respectively, by the said deeds of trust;" and, further, in answer to said paragraph, I say that I took no part in said cause whatever, up to the time of filing said petition, beyond the filing of my answer herein, and signed the said petition for said Shepherd because he was then absent from this country in Mexico, was unable to sign it himself, and he was inaccessible by mail in time to forestall the sale which was advertised after his departure, and because I had been entrusted by him with power of attorney to attend to and transact his business during his absence.

10 & 11. I admit that the allegations of the 10th & 11th paragraphs of the bill are substantially correct, but prefer that the

60 bill and decree in cause No. 7052, equity, shall speak for themselves, and beg that the same may be read and considered as part of this answer. I deny that said bill was dismissed for want of jurisdiction.

I admit that the court in general term subsequently ordered said opinion to be stricken from the files as being no part of the record in said cause. As to what advice plaintiff has received in regard to that opinion I am ignorant, but I say that there is no record of any adjudication upon the prayers of the bill in said cause, except the said decree dismissing the bill with costs.

12. I have been informed and believe it to be true that the portion of ground known as lot "A" is not included in the deeds of trust given to secure the plaintiff, and that the land therein included does not embrace all that is covered by the dwelling-house, and that it is included in the deed of trust to secure the defendant Gray,
61 but as to how the omission occurred or whose fault it was I do not know, and I do not know whether the plaintiff is entitled to have said deeds reformed in that respect or not.

13. I do not know anything as to the agreements between plaintiff and said Shepherd in regard to said deeds of trust and said loans. I did not know of the existence of said deeds of trust or of my name being used in them as trustee until I was notified that I would be called upon to advertise and sell. Upon information and belief I deny that the omission of said real estate from plaintiff's deeds of trust was by the fraud of said Shepherd. I deny that by the omission the plaintiff's security was seriously impaired or made grossly inadequate, or that it caused him irreparable injury, and say that the plaintiff, by his bill in cause 6201 equity, insisted upon his right to have sold the property as described in his said deeds of trust, and did not ask to have said defective description corrected, and in relation to
62 said matter said as follows: "The part of said house not included in the deeds of trust to secure him is what is known as the picture gallery and is situated on what is known in the tax office of the District of Columbia as sub-lot A, square 164, and he charges that said picture gallery is — feet long and that the rear end of about — feet long could be detached without marring or in anywise lessening the value of said property," as will fully appear upon reference to paragraph 12 of said bill.

And I aver that since the filing of said bill the plaintiff has not in any manner sought, up to the time of the filing of this bill, to have said alleged defect in said deeds of trust corrected, but in said bill in cause No. 6201, equity, claimed to have and since has procured to be sold and has purchased, received a deed for, and claimed to have title to the land and premises described in said deeds of trust.

63 14. I am without any personal knowledge as to the matters charged in the 14th paragraph, and call for proof thereof.

14½. I do not know when or where the plaintiff received the information he claims to have received in the 14½ paragraph of the bill, but I am informed and believe and therefore say that the allegations of said paragraph are not true.

15. I do not know what interest, insurance, and taxes have been unpaid by said Shepherd, but I am informed and believe that all arrears of taxes were paid by plaintiff at the time of his purchase of

said property, and that the only tax now due on it is for the year ending June 30, 1881; and I further say that the said property is now assessed in the name of the plaintiff.

I admit that for one year ending March, 1880, the house and premises and the furniture contained in said house was rented to a tenant, who paid the rent, for the sum of $6,000,
64 and that on the 1st day of November, 1880, the house and furniture were rented under a lease to the Chinese embassy, and that they are prompt tenants, and I deny that the said house has been otherwise rented at all, and I deny that Shepherd has been receiving rent at that rate for several years. I admit that no portion of this rent has been paid to said plaintiff, and say that ever since June, 1880, the plaintiff has been seeking, first, to enforce a sale of the portion of the premises covered by his deeds of trust, and since purchasing at such sale and obtaining a deed of said premises has sought in every way to gain possession of said premises, and by his cross-bill in cause No. 7052, equity, which is prayed to be read and considered as part of this bill, he sought to have a receiver appointed to collect said rents and an injunction to prevent said Shepherd from receiving them and a writ of assistance to put him into possession of said premises, and that when the decree
65 was rendered in said equity cause dismissing the bill and thereby refusing the relief prayed in the cross-bill he sought, by his agent's taking a certified copy of said decree to the Chinese minister and claiming that said decree was an adjudication in his favor, to induce said minister not — recognize any right in said Shepherd in said property, and, failing in that and knowing that said minister intended to take possession of said premises on Monday, November 1st, 1880, he procured one Allen, a constable of the District of Columbia, knowing said house to be occupied by the servants of said Shepherd, and authorized him to obtain admittance to said premises, and thereupon to take forcible possession thereof, and said constable informed me upon that morning, in the said house to which he had obtained admittance by ringing the front door bell, that he was there as the agent of the plaintiff, with written evidences of the plaintiff's right and with full instructions
66 to take possession for the plaintiff; but that as he found the representatives of the Chinese emperor in possession he would not be able to do anything; and I further say that since that day, as I am informed and believe and aver, the plaintiff has called upon the Chinese minister and earnestly protested against his paying any rent to said Shepherd, and claimed that the right to the property and possession had been adjudicated in his favor by the decree passed in cause No. 7052, equity; and I further say that upon several occasions since the time when the said premises were rented to said embassy both William F. Mattingly, one of the defendants to this bill, and I, as attorneys to said Shepherd, have, to the attorneys and agent of said plaintiff, offered to make an arrangement by which the rents of said house and furniture would be applied to paying taxes,
67 insurance, and interest, provided the plaintiff would surrender all claim of title to said property under said sale, and would

reduce the rate of interest from nine to six per centum per annum, and no notice was given to said Shepherd or his attorneys that plaintiff claimed or desired to abandon his title until his bill was filed, when an injunction issued against said Shepherd in this cause was served upon me restraining the collection of rents and the disposition of rents collected, and I say that but for said injunction, upon information that plaintiff abandoned the title he claimed to have obtained by said sale and deed, the current taxes and such back taxes as are unpaid would have been paid by said Shepherd's attorneys; and, further, in answer to said paragraph, I say that the plaintiff, in addition to the proceedings in the various causes in equity mentioned, on the 20th day of April, 1880, brought
68 suit against the defendant Shepherd, upon the law side of this court in cause No. 21841, at law, upon the several promissory notes described in the bill in this cause, and that the said suit is still pending.

16. I deny that the incumbrances and liens upon said property amount to $120,000, and say that, so far as the claims of said plaintiff are concerned, his statement of account filed with his bill shows that he has sought to enlarge them by wrongfully compounding the interest, at nine per centum, on the principal debt, and by charging interest at the same rate per annum upon taxes and insurance paid by him; and I aver, upon information and belief, that the said premises cost said Shepherd over $180,000, and that either in whole or the part embraced in the description contained in his deeds of trust are adequate security for the payment of the defendant Shepherd's debt to the plaintiff, and I deny that said Shepherd is
69 insolvent; and, upon information and belief, aver that since he went to Mexico he has acquired property that will much more than enable him to pay all of his debts. I aver that since November 15th, 1876, the date of his deed of trust to secure his creditors, said Shepherd has paid to his creditors in real estate, cash, and securities in settlement of his debts about $1,200,000.00, of which sum about $330.000 was in cash, and that the unsatisfied judgments against him are few and small in amount, and some of them are contested.

17. In answer to paragraph No. 17 I say that I believe that, if interfered with in any way, the said minister will avoid all embarrassment by quitting said premises. I deny that I have ever been called upon or requested to sell said property except upon the one occasion before said bill in cause No. 6201 was filed, and I also deny that I have declined to sell except by the letter filed as an exhibit to said bill, and I
70 deny that any occasion has since presented itself for any expression on my part of willingness or unwillingness to sell, and that, on the contrary, the plaintiff and his attorneys have claimed ever since the advertisement and sale of said property by said Johnston and Philip and up to the time of filing this bill that I was removed and Johnston substituted as trustee in my place and stead under the first of said deeds of trust, and that the plaintiff acquired a good title by purchasing at said sale and receiving a deed

from said Philip and Johnston, and I say that under the circumstances the said allegations that I had not expressed any willingness to sell and that I had endeavored to delay and prevent said sale are made without any apparent object, except to distract attention from the fact evident upon the face of the bill that the delays
71 in making and ultimate miscarriage of said sale ever since the filing of the bill in cause No. 6201 were caused by the willful and blind persistence of the plaintiff in pursuing means to sell and get possession of said property, the want of success of which he now seeks to use as giving him a claim to the consideration of this court.

A. C. BRADLEY.

Andrew C. Bradley, being duly sworn, says that he has read the foregoing answer by him subscribed, and that the facts therein stated of his own knowledge are true, and that those therein stated upon information received from others he believes to be true.

A. C. BRADLEY.

Subscribed and sworn to before me this 5th day of October, 1881.

R. J. MEIGS, *Clerk*,
By M. A. CLANCEY, *Ass't Clerk*.

72 *Pro Confesso Against Certain Defendants. Filed Oct.* 10, 1881.

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
ALEXANDER R. SHEPHERD *et al.* } In Equity. No. 7803.

It appearing to the court that the defendants, James E. Fitch, William F. Mattingly, Peter Bacon, Samuel Cross, John Alexander, and George M. Barker, were duly served with process in this cause on July 22, 1881, and that neither of the said defendants, Fitch, Alexander, or Barker, has entered his appearance herein, it is by the court, this 10th day of October, 1881, ordered that the bill of complaint be, and it is hereby, taken as confessed against said defendants, Fitch, Alexander, and Barker, for want of appearance; and it further appearing to the court that the said defendants, Mattingly, Cross, and Bacon, entered their appearance in this cause on the 6th day of September, 1881, and that neither of said defendants so appearing has filed his answer herein, it is ordered by the court
73 that the bill of complaint in this cause be taken as confessed against said defendants, Mattingly, Cross, and Bacon, for failure to answer said bill.

By the court:

A. WYLIE.

Order to Clerk to Issue Alias Writs of Subpœna. Filed Oct. 12, 1881.

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
ALEX. R. SHEPHERD *et al.* } No. 7803, Eq.

The clerk will issue *alias* writs of subpœna in this cause against Alexander R. Shepherd, Mary G. Shepherd, David L. Bartlett, and Mercy M. C. Gray.

HANNA & JOHNSTON,
Sol'rs for Compl't.

Alias Writs of Subpœna. Issued Oct. 12, 1881.

In the Supreme Court of the District of Columbia, Oct. 12, 1881.

GEORGE S. PEPPER, Complainant,
against
ALEX. R. SHEPHERD *et al.*, Defendants. } No. 7803. Equity Docket 21.

The President of the United States to Alex'r R. Shepherd, Mary G. Shepherd, David L. Bartlett, Mercy M. C. Gray, defendants:

74 You are hereby commanded to, as you have heretofore been commanded to, appear in this court at its first special term occurring twenty days after service of this subpœna and answer the exigency of the original bill, under pain of attachment and such other process of contempt as the court shall award.

Witness D. K. Cartter, chief justice.

[SEAL.]

R. J. MEIGS, *Clerk, &c.*,
By M. A. CLANCEY,
Ass't Clerk.

Marshal's Return.

Not to be found, Alexander R. Shepherd, Mary G. Shepherd, David L. Bartlett, & Mercy M. C. Gray.

December 15, 1881.

C. E. HENRY, *Marshal.*

Answer of Mercy M. C. Gray. Filed Oct. 17, 1881.

In the Supreme Court of the District of Columbia, Holding a Special Term. In Equity.

GEORGE S. PEPPER
vs.
ALEXANDER R. SHEPHERD *et al.* } No. 7803, Equity.

75 The answer of Mercy Maria Carter Gray to the bill in this cause filed against her.

To so much of the bill in this cause as she is advised it is proper for her to answer, she, answering, says:

1st. To the first paragraph of the bill she says that she admits the allegations therein made as true.

2d. To the second paragraph she says that she admits as true the allegations therein made.

3d. To the third paragraph she says that she admits as true the allegations therein made.

4th. To the fourth paragraph she says that she admits as true the allegations therein made, and further says that the promissory note therein mentioned was for the sum of thiry-five thousand dollars.

5th. To the fifth paragraph she says that she has no knowledge of the truth or falsehood of the allegations made by the complainant in respect to his being the holder of the notes therein mentioned as held by him, nor as to the amount of interest due
76 thereon, nor as to the money advanced by complainant, nor as to the true amount at present due him, and she neither admits nor denies the truth of said allegations, but calls for proof thereof; that she has been informed and has no reason to disbelieve the information that the complainant is the holder of the notes which he professes to hold, and that there is a large amount of interest due thereon. This defendant admits that she is still the holder of the note for thirty-five thousand dollars mentioned in the fourth paragraph of the bill, and that said note is due and wholly unpaid, and that interest is due thereon from May 15th, 1877 A. D.

6th. To the sixth paragraph she says that she admits as true the allegations therein named.

6½. To the sixth-and-a-half paragraph she says that she has no knowledge of the number of the parties secured by the deed therein referred to, and she neither admits nor denies the truth of
77 the allegations, but calls for proof thereof.

7th. To the seventh paragraph she says that she admits the truth of the allegations therein made.

8th. To the eighth paragraph she says that she admits the truth of the allegations therein made.

9th. To the ninth paragraph she says that it is true that the complainant did on or about April 11th, 1878, file a bill in this court, the same being the original bill in equity cause No. 6201, docket 18; that it is not true that the said bill alleged the refusal of the defendant, Andrew C. Bradley, to comply with the complainant's request for him to proceed, in connection with his co-trustee, William H. Phillip, now deceased, to execute the trust which had been reposed in him under the first of said deeds of trust given to secure the complainant, but the truth is that the complainant alleged in said bill that he did in writing order and request the trustees under said deeds of trust to secure him to advertise said
78 *said* real estate for sale, but that said defendant, Andrew C. Bradley, one of the trustees under both of said deeds of trust, refused so to do, and his written refusal is annexed as an exhibit to the bill; that all the allegations of the complainant in the original bill in equity cause No. 6201 refer to both deeds of trust securing the complainant, and that the bill prays "that a trustee be by the order of this honorable court appointed in place and stead of the

trustees under said deeds of trust first mentioned, with directions and authority to forthwith execute all the trusts reposed in them, respectively, by the said deeds of trust," and this defendant refers to said original bill as a part of this answer. This defendant admits that the decree in said equity cause No. 6201, passed on the 12th day of April, 1879 A. D., is correctly set out in the complainant's bill.

79 This defendant has no personal knowledge of the truth of the other allegations made in the 9th paragraph of the bill, and neither admits nor denies the same, but refers to the records of this court in said equity cause No. 6201 as the best evidence of the proceedings therein had.

10th. To the tenth paragraph she says that she is informed and believes that William H. Phillip, now deceased, and the defendant, James M. Johnston, purporting to act as trustees, did, on the 23d day of October, 1879 A. D., or thereabouts, offer for sale and go through the form of making sale of the property mentioned in the bill, but this defendant avers that said pretended sale was void and of no effect; that the defendant has no knowledge of the truth of the other obligations made in said paragraph, and neither admits nor denies the same, but refers to the records of equity cause No. 7052 as the best evidence of the proceedings therein had.

80 11th. To the eleventh paragraph she says that she has no personal knowledge of the facts therein alleged, and neither admits nor denies the same, but calls for proof thereof.

12th. To the twelfth paragraph she says that the property described in the deed of trust given by the defendant, Alexander R. Shepherd, to secure the loan made to him by this defendant was improved by a handsome and expensive dwelling-house, erected by the defendant Shepherd at a cost, as this defendant is informed and believes, of nearly the sum of a hundred and thirty thousand dollars, and that said dwelling-house extends over almost the whole of the land conveyed to secure this defendant; that the said real estate so conveyed was lot (2) three, in A. R. Shepherd's subdivision of square one hundred and sixty-four (164), which was duly recorded in the surveyor's office of the District of Columbia, in Liber Dr. W. B. Magruder, folio 171; that the defendant Shepherd created lot

81 three by uniting the portion of lot two which is described by metes and bounds in the deeds of trust before referred to securing the complainant; with a subdivision lot known as lot "A," and this subdivision of said Shepherd was duly recorded in the surveyor's office about September 1st, 1873, some nine months before the first deed of trust to secure the complainant was made. This defendant admits that two trust deeds given to secure the complainant by the defendant Shepherd do not embrace the whole of said subdivision lot three, but only that part of it which was formerly known as part of subdivision lot two. This defendant does not admit that the omission of the remaining part of subdivision lot three from the deeds of trust given to secure the complainant was either by accident or fraud on the part of the said defendant, A. R. Shepherd, or his agents. This defendant has no personal

knowledge of the transactions between the defendant, A. R.
82 Shepherd, and the complainant, and this defendant calls for strict proof of the facts so alleged by the complainant, and denies, if the facts be true as alleged, that the complainant has any right in equity to have his deeds changed or his lien extended against the rights of this defendant.

13th. To the thirteenth paragraph she says that she has no personal knowledge of the facts therein alleged, and she neither admits nor denies the same, but calls for strict proof thereof. She denies that it is a fact as alleged that the first deed of trust embraced all of the property known as sub-lot three, in square 164. She denies, on information and belief, that the defendant Shepherd stated or states that it was by accident or mistake on the part of himself or his agents that the whole of subdivision lot three, in square 164, was not embraced in the deeds of trust to secure the complainant.

She avers, on the contrary, that the said defendant Shepherd
83 denies that the said negotiation was conducted or the deeds prepared by himself or by his agents, but he says the negotiation was conducted and the deeds prepared by the agents of the complainant.

14th. To the fourteenth paragraph she says that she denies the facts therein alleged, and that the same are untrue. This defendant avers the truth to be that at the time the deed of trust was given to secure her on said subdivision lot three, in square 164, she was informed and believed that the two deeds of trust given to secure the complainant covered only a portion of said lot, being the portion described in said deeds of trust to which reference is hereby made, and that the deed of trust given to secure her was a second lien on the portion of said subdivision lot three described in said deeds of trust given to secure the complainant and the first lien on the remaining part of said subdivision lot three, in square
84 164; that, relying on this information, which was true in fact, this defendant loaned to the defendant Shepherd thirty-five thousand dollars on the security of said subdivision lot three, in square 164, and received the deed of trust on said property to secure the loan mentioned in the bill, and she denies that she had any knowledge or information that the claimant claimed or had any right to claim that there was accident, mistake, or fraud in connection with the said deeds of trust given to secure him or that the same should have covered any property beyond what they actually —; and this defendant denies the right of the complainant to have said deeds of trust securing him amended, extended, or changed as against this defendant, and she further denies that he has a right to any lien on any part of subdivision lot three, in square 164, as against this defendant, except that which was
85 described in said deeds of trust given to secure him.

14½. To the fourteenth-and-a-half paragraph she says that she has no personal knowledge of the facts therein alleged, but that she is informed and believes that the record title to subdivision lot "A," in square 164, is a tax title, and she is further informed that

the said Shepherd has perfected his title to said subdivision lot "A" and controls said title, but has not made the same matter of record.

15th. To the fifteenth paragraph she says that no portion of the principal sum of $35,000.00 due to her has been paid, and that no interest has been paid on the same since the 15th day of May, 1877; that she does not know the truth of the allegations of the complainant in respect to the debt due him and the interest thereon being unpaid and his payment of money for insurance on the property, but she has no reason to doubt the same; that she is in-
86 formed that it is true that the defendant Shepherd has not paid taxes on said property as alleged by complainant; that she is further informed and believes that there is no danger of any tax sale or sales for the reason that the complainant has regularly paid the taxes except those for the year ending June 31st, 1881; that she is informed and believes that it is not true that the said Shepherd has been receiving for several years past, as rent for the said property and the furniture of the said house, the sum of $6,000.00 per annum, but on the contrary avers, on information and belief, that the said Shepherd received — rent for said property and the furniture $6,000.00, being rent from March, 1879, to March, 1880, and has also been receiving rent at the same rate from November, 1880, to this date. This defendant avers, on information and belief, that while the said Shepherd used a large part of said rent for his family expenses, that he applied a portion to the pay-
87 ment of his just debts, and that he has not for some time past applied any of it to his own uses, but this defendant believes that he will in the future continue to apply said rent to the payment of his just debts, it being her firm belief that the said Shepherd will, as soon as and as rapidly as his means permit him, pay all his just debts.

16th. To the sixteenth paragraph of the bill she says that on information and belief she denies that the existing encumbrances on said property are as great as stated by the complainant, and are increasing at the rate he avers; that she avers the truth to be, as shown by the statement filed by the complainant with the bill, that the total amount claimed by him to be due, independent of the debt due this defendant, is $77,761.34; that this defendant is informed and believes that this statement contains many charges improperly made, and which will be disallowed by a court of equity,
88 and this defendant denies that said real estate, with the improvements, is an inadequate security for the sum of $77,761.34, or that it cannot be sold for that sum of money, and this defendant further denies on information and belief that the said defendant, Shepherd, is at present utterly insolvent. She admits that there are a number of unsatisfied judgments against him in this court, and that he is besides largely indebted in this District, but she avers that the said indebtedness was contracted several years since, and that about two years ago the said defendant, Shepherd, was insolvent; that at that time he left this District and engaged in the business of silver mining in the country of Mexico, and that this defendant is informed and believes and therefore avers that

the said Shepherd has been unusually and *and* remarkably successful in said business, and has acquired and accumulated a
89 very large amount of valuable property; that he is still successfully prosecuting said business and rapidly increasing his acquisitions; and this defendant is further informed and believes that he will soon be enabled to pay all debts owing by him, and she denies that he is unwilling to pay any just debt that he may owe, and she is informed that the property owned by him consists principally of interests in silver mines which are rapidly increasing in value, and it would be exceedingly unwise and a great sacrifice to sell the same and convert them into money at present; that this defendant is willing and desirous that *that* the said Shepherd shall be left in the uninterrupted possession and control of the income of said subdivision lot three, square 164, believing that he will properly use and apply said income to meet his just obligations, and she does not desire a receiver appointed to take possession of said
90 property and collect said income. She avers that it would be greatly against the interest of this defendant to have a sale made of said subdivision lot 3, square 164, as said forced sale would probably result in the sacrifice of the property and enable the complainant to again bid it in at a price far below its value, and this defendant does not desire a sale of said property.

17th. To the seventeenth and eighteenth paragraphs she says that she has no knowledge of the facts therein alleged and neither admits nor denies the same, but calls for proof thereof.

And this defendant, having fully answered, prays to be hence discharged with her reasonable costs in this cause incurred.

MERCY MARIA CARTER GRAY.

I do solemnly swear that I have read the answer by me subscribed and know the contents thereof, and that the facts
91 therein stated upon my personal knowledge are true, and that the facts therein stated upon information and belief I believe to be true.

MERCY MARIA CARTER GRAY.

Subscribed and sworn to before me this seventh day of October, A. D. 1881.

[SEAL.] CHARLES H. HUBBS,
Notary Public in and for Solano County, State of California.

HENRY WISE GARNETT,
Sol'r for Def't.

STATE OF CALIFORNIA, }
County of Solano, } *ss:*

I, Joel A. Harvey, county clerk in and for said county and State and *ex officio* clerk of the superior court of said Solano county (the same being a court of record), do hereby certify that Charles H. Hubbs, Esq., whose name is subscribed to the annexed jurat, was at the date thereof and is now a notary public in and for the said

county, duly qualified and acting as such, and that his signature thereto is genuine.

92 I further certify that the said certificate of said notary public is made and executed in accordance with the laws of the State of California.

In witness whereof I have hereunto set my hand and affixed the seal of said court this 8th day of October, 1881.

[SEAL.] JOEL A. HARVEY,
County Clerk and ex Officio Clerk of said Superior Court.

Aff'd't of J. F. Olmstead. Filed Nov. 26, 1881.

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
ALEXANDER R. SHEPHERD *et al.* } No. 7803. Eq. Doc. 21.

I, John F. Olmstead, do swear that I am familiar with the property of Alexander R. Shepherd at the corner of Connecticut avenue and K street, in this city. The house is very elaborately trimmed and finished inside. The entire property is worth, at a rea-
93 sonably low estimate, and ought to bring at least one hundred thousand dollars ($100,000.00). With the portion omitted not included in the deeds of trust securing George S. Pepper, the property is worth and ought to bring the sum of at least eighty thousand dollars ($80,000). I am familiar with the values of real estate generally in this city, having been engaged in the real estate brokage business for ten years and upwards.

JOHN F. OLMSTEAD.

Subscribed and sworn to before me this 16th day of September, A. D. 1881.

WM. P. YOUNG,
[SEAL.] *Notary Public.*

Answer of Cross & Bacon. Filed Nov. 28, 1881.

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
ALEXANDER R. SHEPHERD *et al.* } No. 7803, Equity.

The joint and several answer of Samuel Cross and Peter F.
94 Bacon, two of the defendants, to the bill of complaint of the above-named plaintiff.

In answer to the said bill these defendants say as follows:

1. They admit the allegations of the first paragraph of said bill, except as to the defendant, David L. Bartlett, who does not reside in the District of Columbia, but who resides in the city of Baltimore, State

of Maryland, and as to the said defendants, Alexander R. Shepherd and Mary G. Shepherd, who, they are informed and believe, reside only temporarily in Mexico and intend to return to the District of Columbia.

2, 3, 4. Upon information and belief they admit the allegations of the 2d, 3d, and 4th paragraphs.

5. They are informed and believe that the plaintiff owns and holds the promissory notes for $35,000 and $10,000, as he claims in paragraph 5, and that defendant, Mercy M. C. Gray, owns and holds the other said note for $35,000, and that said notes are all over-
95 due and unpaid, but they don't know what amount of interest is due upon said notes or what amount has been paid by complainant for taxes and insurance, and they do not admit the allegations relating thereto and call for strict proof thereof. They deny that the statement marked Exhibit G. S. P. No. 1, filed with the bill, is a correct or just account of said interest, insurance, and taxes, or that the said amount is secured by the said deeds of trust, and they aver that the said statement shows that the plaintiff has compounded the interest upon said notes and charged interest upon taxes and insurance claimed to have been paid by him at the rate of 9 per centum per annum, and that the aggregate amount is thus wrongfully increased $4,582.00.

6. They admit the allegations of said 6th paragraph of the bill, and say that the said defendants not only undertook to but did actually convey the said lot.

6½. They are informed and believe that the most of the
96 parties secured by said deed of trust have been paid and satisfied, and that the number of those holding unsettled and unsatisfied claims is comparatively few, and they aver that both George M. Barker and John Alexander have been paid and satisfied in full, and that they have no interest in the subject of said trust.

7, 8. They admit the allegations of the 7th & 8th paragraphs.

9. They admit that the complainant filed a bill in this court, being cause No. 6201, equity, but they deny that the substance of said bill is correctly stated by the complainant, and they refer to said bill and make the same a part of this answer, and say that in the 10th paragraph of said bill this complainant alleged that "he did in writing order the trustees under said deeds of trust (to secure him) to advertise said real estate for sale, but that said defendant, Andrew
C. Bradley, one of the trustees under both of said deeds of
97 trust, refused so to do," and that by said bill he prayed" that a trustee be, by the order of this honorable court, appointed in place and stead of the trustees under said deeds of trust first mentioned, with directions and authority to forthwith execute all the trusts reposed in them, respectively, by the said deeds of trust," and he also prayed for such other and further relief as the circumstances of the case might require, and they say that said bill was and is a bill to foreclose the said deeds of trust by the order and direction of this court and through its officer or officers.

They admit that the decree recited was subsequently passed in the cause; that an appeal was taken therefrom to the court in gen-

eral term; that the property was advertised as alleged, and that a petition was filed by said Shepherd to injoin said sale, and that the prayer of said petition was denied, and they say that they are informed and believe and therefore allege that the said petition
98 was denied solely on the ground that, an appeal having been taken to the court in general term, the special term was without jurisdiction to entertain said petition.

10. They admit, on information and belief, that said property was sold by said Johnston and Philip, as alleged in paragraph 10 of said bill, and that defendant Shepherd subsequently filed his bill in cause No. 7052, equity (having first dismissed his appeal in cause No. 6201), to set aside said sale, and that the defendant Pepper (the complainant in this cause) filed therein answer and a cross-bill, and a decree was rendered dismissing said bill, and an opinion subsequently filed in said cause, a copy of which is Complainant's Exhibit G. S. P. No. 2; but they are advised and therefore deny that the court dismissed said bill for want of jurisdiction, and they refer to said bill, answer, and cross-bill as part of this answer, and say that by said cross-bill the complainant Pepper prayed for injunction and receiver, and his right to such relief was adjudicated in said cause.

99 11. They admit that the opinion referred to was, by the court in general term, ordered to be stricken from the files as no part of the record, and deny that there was any other adjudication in said cause than the decree dismissing the bill of complaint, and thereby carrying with it the cross-bill.

12, 13, 14, 14½. They have no personal knowledge of the matters and things alleged, and charged in the 12, 13, 14, 14½ paragraphs, and do not admit the same to be true, but call for strict proof thereof, and they say that in complainant's bill in cause No. 6201 complainant Pepper alleged in relation to the cutting off of a portion of the improvements by the description of the property in his deeds of trust, to the contrary of "seriously impairing complainant's security, making the same grossly inadequate and causing him irreparable injury," as he alleges, in paragraph 13 of this bill that this portion of the improvements "could be detached without marring
100 or in anywise lessening the value of said property," and claimed the right to sell the portion covered by his deeds of trust.

They are informed and believe that no part of the principal debt due complainant has been paid, and they therefore admit it, and they also admit that no part *no part* of the principal has been paid Mercy M. C. Gray, but they do not know what amount of unpaid interest, insurance, and taxes is properly due and payable by the defendant Shepherd, and they call for proof thereof. They deny that there is danger of title paramount and hostile to the parties to this cause being acquired by strangers through tax sale, and upon information and belief aver that but for this bill and the restraining order issued thereon all unpaid taxes would have been settled and paid by said Shepherd, and they also aver, upon information

and belief, that said Pepper intimated for the first time
101 when he filed this bill and procured said restraining order that there was any doubt as to his having a good legal title to the property purchased by him at said sale. They admit that for one year ending in the spring of 1880 the defendant Shepherd received — rent for said house and the very expensive and elegant furniture therein contained the sum of $6,000, and that said house and furniture have been rented to the Chinese embassy at the same rate since November 1, 1880, but they deny that it has been otherwise rented at all, and they deny that complainant has any right or claim to said rents.

16. They deny that the existing encumbrances upon said property amount to $120,000, and that they are increasing at the rate of $9,000, and they aver that the said property is adequate security for the payment of complainant's legitimate claim, and that the same is worth from $85,000 to $100,000. Upon information and belief they deny that said Shepherd is insolvent. They deny that
102 his unsecured debts amount to $310,000, and they aver that in a short space of time said Shepherd will pay all of his debts, as he has now paid the great bulk of them, and they believe that he is not only willing to pay, but that he will do so.

17. They know nothing of the averments of the 17th paragraph, and do not admit them.

18. They do not know as to the matters contained in the 18th paragraph, and if the same are material they call for proof.

And, further answering, they say that they are advised and therefore aver that the heirs of William H. Philip are necessary parties to this suit, and that they have been omitted; and they ask the same benefit of said objection as if they had demurred to said bill for that cause.

And, further answering, they say that under and by the said deeds of trust the complainant has no right to the rents of said
103 house or so much thereof as is embraced in his deeds of trust, and much less has he any right to the rent of the furniture contained in said house, nor has he the right to the possession of said house or land or premises, nor have the trustees under said deeds any right to the possession of said property, nor has the complainant any interest in said land and premises or any right under said deeds except to have said land and premises sold, if he has any right thereunder, and to have his claims paid out of the proceeds of such sale.

And, further answering, they say that the whole subject of this bill as against the defendant Shepherd is embraced in the said cause No. 6201, equity, which is still pending, and if the complainant is entitled to any relief by reason of the various matters set up in this bill he must seek such relief in said cause No. 6201, equity, by bill of review or otherwise; and they claim the same benefit of
104 the said objection to this bill as if they had specially pleaded the same in bar.

And, having fully answered, &c.

SAM. CROSS,
PETER F. BACON,
Trustees.

ENOCH TOTTEN,
Sol'r for Cross & Bacon.

Samuel Cross and Peter F. Bacon say on their oath that they have heard read the above bill by them signed and know the contents thereof, and that the facts therein stated of their own knowledge are true, and those stated upon information received from others they believe to be true

SAM. CROSS,
PETER F. BACON,
Trustees.

Sworn and subscribed before me this 28th day of November, 1881.

[SEAL.] W. P. BELL,
Notary Public.

105 *Order Striking out Pro Confesso and Leave to Plead, &c. Filed Nov'r* 28, 1881.

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
ALEXANDER R. SHEPHERD *et al.* } No. 7803, Equity.

Upon motion of defendants' solicitors, it is ordered, this 28th day of November, 1881, that the decree *pro confesso* taken in this cause against defendants, Samuel Cross, Peter F. Bacon, and William F. Mattingly, be, and the same hereby is, set aside, and leave is given to said defendants to plead, answer, or demur as they shall be advised within ten days from the date hereof.

By the court:

A. WYLIE.

Decree Granting Injunction and Appointing Receiver. Filed Dec. 1, 1881.

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
ALEXANDER R. SHEPHERD *et al.* } No. 7805, Equity.

106 This cause coming on to be heard on the motion of the complainant for an injunction and the appointment of a receiver, and the bill, answers, and affidavits filed herein having been read and the cause having been argued by counsel for the respective

parties and considered by the court, it is, this first day of December, 1881, by the court ordered that the defendants, Alexander R. Shepherd, Mary G. Shepherd, Mercy M. C. Gray, Andrew C. Bradley, James E. Fitch, Lewis J. Davis, William F. Mattingly, James M. Johnston, David L. Bartlett, Peter Bacon, Samuel Cross, and each of them, their and each of their agents, servants, and attorneys, be, and they are and each of them is hereby, enjoined and restrained until the final hearing of this cause from collecting or receiving, directly or indirectly, any portion of the rent now unpaid or which was unpaid on July 20, 1881, for the use and occupation of subdivision lot numbered three, in square numbered one hundred and sixty-four, and the improvements thereon, or for the use of the furni-
107 ture in and upon said house and premises numbered 1705 K street northwest, or from in any way assigning or disposing of the said rents which were unpaid on July 20, 1881, or the rents which may be collectible by either of the said parties defendant for the use of said lot, improvements, or furniture, or which may hereafter become due therefor.

And it is further ordered that Francis P. B. Sands be, and he is hereby, appointed a receiver in this cause, with direction, power, and authority to collect and receive from the present tenant or occupant of said lot and improvements all rent for the use of said lot, improvements, and furniture since July 20, 1881, or which was unpaid on July 20, 1881, and all rent which may hereafter become due and until the final hearing of this cause from the said present tenant or any future tenant of said lot and improvements, with the furniture therein, or any part thereof.

108 And if said lot and improvements should be vacated by the present tenant in possession, or if his tenancy or actual occupation should be in anywise determined, then said receiver is hereby authorized and directed to take possession of said lot and improvements and hold the same subject to the further order of this court.

And each of said defendants, his agents, servants, and attorneys, is ordered to pay over to said receiver any rents from said lot, improvements, or furniture which may have been paid to him or his agents since July 20, 1881.

Said receiver shall, before acting in execution of this order, file in this cause his bond in the penalty of ten thousand dollars ($10,000.00), with a surety or sureties, to be approved by the court, and conditioned for the faithful discharge of all duties imposed on him by this order or which may be imposed on him by any future order in this cause.

109 And from this decree each of the defendants enjoined, by their counsel, in open court, prays an appeal, and the penalty of the appeal bond for supersedeas is hereby fixed at eight thousand dollars.

A. WYLIE.

Marshal's Return.

Served copies of injunction on Wm. F. Mattingly & A. C. Bradley. Dec. 2d, 1881.

C. E. HENRY, *Marshal.*

Special Appearance of Mattingly & Totten. Filed Dec. 3, 1881.

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
ALEX. R. SHEPHERD *et al.* } 7803. Eq. Doc. 21.

The clerk will enter our appearance specially for the defendant, Alex. R. Shepherd, for the purposes of the appeal from the order appointing a receiver, &c., passed December 1, 1881, and not for any other purpose.

ENOCH TOTTEN.
WM. F. MATTINGLY.

Dec. 3d, 1881.

110 *Appeal Bond. Filed Dec.* 10, 1881.

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
ALEXANDER R. SHEPHERD *et al.* } No. 7803, Equity.

Know all men by these presents that we, Alexander R. Shepherd, as principal, and John F. Olmstead, William F. Mattingly, and Andrew C. Bradley, as sureties, are held and firmly bound unto George S. Pepper, plaintiff in the above-entitled cause, in the sum of eight thousand dollars; to the payment of which, well and truly to be made unto the said George S. Pepper, his executors and administrators, we do hereby bind ourselves and each of us, our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 9th day of December, A. D. 1881.

Whereas said Alexander R. Shepherd *having* appealed from the order passed in this cause on the 1st day of December, 1881, appointing a receiver and awarding an injunction, now the condition of the above obligation is this, that if the said Alexander R. Shepherd shall prosecute said appeal with effect or pay all damages and costs, then the above obligation shall be void; but otherwise shall be and remain of full force and virtue in law.

ALEXANDER R. SHEPHERD, [SEAL.]
By WM. F. MATTINGLY AND
A. C. BRADLEY,
Attorneys-in-Fact.
JOHN F. OLMSTEAD. [SEAL.]
WM. F. MATTINGLY. [SEAL.]
A. C. BRADLEY. [SEAL.]

Approved:
A. WYLIE, *Justice, &c.*

111 *Dismissal of Appeal by Johnston. Filed Dec.* 10, 1881.

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
ALEXANDER R. SHEPHERD *et al.* } In Equity. No. 7803.

As it appears from the decree passed in this cause on the 1st day of December, 1881, that I am one of the appellants to the general term from said order, though such is not the case, you will please enter said appeal dismissed as to me.

JAMES M. JOHNSTON.

Dec. 9, 1881.

112 *Motion to Dismiss Appeal. Filed Jan.* 23, 1882.

In the Supreme Court of the District of Columbia, January 23, 1882.

GEORGE S. PEPPER
vs.
ALEXANDER R. SHEPHERD *et al.* } In Equity. No. 7803.

And now comes complainant, by Hanna & Johnston, of his counsel, and moves the court to dismiss the appeal of each and all the defendants to the general term and for the following reasons:

1. Failure of said appellants to file a printed record, as provided by rule 92.
2. Because the court in general term has no jurisdiction of the said appeal.
3. Because said appeal was irregularly taken and perfected.

HANNA & JOHNSTON,
Of Counsel for Compl't.

113 *Order Dismissing Appeal to Gen'l Term. Filed Feb.* 28, 1882.

In the Supreme Court of the District of Columbia.

PEPPER
vs.
SHEPHERD. } In Equity. No. 7803. Cal. 93.

This cause coming on to be heard on the motion of the plaintiff to dismiss the appeal taken herein from the order and decree of the court sitting in special term passed on the first day of December, 1881, appointing a receiver and granting an injunction, it is ordered and decreed by the court in general term this 28th day of February, 1882, that said appeal be, and the same is hereby, dismissed with costs.

By order of the court.

D. K. CARTTER, *Ch'f Just.*

whole amount of rent of house and furniture simply on the ground that the said rent is unapportioned and undivided, and that the court would take charge of all, in order to secure the rent of the house; that the said furniture is of the most expensive and elegant character, and that the whole amount of rent, $6,000 per annum, would not pay ten per centum interest upon its cost, and that according to use, custom, and practice in renting furnished houses the proportion justly estimated for a completely furnished house is ordinarily one-half, owing to the greater wear and tear and loss by deterioration of that class of property, and that the just proportion of the rent of this house and furniture is more than one-half for the furniture, and that the elegant furniture was the principal
120 inducement to the tenants in agreeing to rent said furnished house. They further show that they will be greatly embarrassed in the care and management of the property under their control under the said deed of trust and in dealing with the creditors of said Shepherd, and that the said creditors will be injured and delayed in their rights if the said sum now in their hands be all turned over to the said receiver, as required by said order, and if the said receiver collect and hold until final hearing all the subsequently accruing rents; and they further show that they will be subjected to an absolute loss to the extent of the receiver's commissions upon the rent of said furniture. They show that if the said amount was in the hands of the receiver they would have the right to apply to this court to fix the proper rent of the respective properties and apportion the same. They therefore pray that the said order may be modified so as to require them to pay to the receiver and to authorize the receiver to collect only such portion of said rent as may be found upon reference to the auditor for that purpose to be properly rent of the said house; that the cause may be referred to the auditor to examine and take proofs and apportion the said rent and
121 report the same to this court, and that they may have such other and further relief as the circumstances may require.

W. F. MATTINGLY.
A. C. BRADLEY.

Subscribed and sworn to before me this 13th day of March, 1882.

R. J. MEIGS, *Clerk.*
By M. A. CLANCY,
Ass't Clerk.

Petition Denied. Filed March 28, 1882. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
ALEXANDER R. SHEPHERD. } In Equity. No. 7803.

On consideration of the petition of Messrs. A. C. Bradley & W. F. Mattingly, filed herein on the 13th day of March, 1882, it is by the

court, this 28th day of March, 1882, ordered that the prayers of said petition be, and the same hereby are, denied without prejudice to the right of proper parties to this cause to make a similar application.

A. B. HAGNER,
Asso. Justice.

122 Filed Mar. 29, 1882. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

PEPPER *vs.* SHEPHERD *et al.* } No. 7803, Equity.

Messrs. Hanna & Johnston & N. Wilson, sol'rs for compl'nt:

Please take notice that on Friday, 31st inst., we will call up for hearing the petition of defendants Shepherd, Cross, Bacon, and Bartlett, this day filed, at the opening of the court in special term or as soon thereafter as counsel can be heard.

A. C. BRADLEY,
WM. F. MATTINGLY,
ENOCH TOTTEN,
Solicitors for Def'ts.

Service of copy acknowledged M'ch 29, '82.
HANNA & JOHNSTON.

123 *Petition of Shepherd, Bacon, Cross, & Bartlett for Rents. Filed Mar.* 29, 1882. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

PEPPER *vs.* SHEPHERD *et al.* } 7803, Equity.

To the supreme court of the District of Columbia, holding an equity court for said District:

The petition of Alexander R. Shepherd, Peter F. Bacon, Samuel Cross, and David L. Bartlett respectfully shows—

That on the first day of December, 1881, an order was passed in this cause injoining petitioners and other defendants from collecting rent of house 1705 K street, the property in controversy, or of the furniture therein contained, and appointing a receiver to collect said rent, as will fully appear by said order; that from said order your petitioner, Shepherd, appealed to the general term and gave a supersedeas bond in the penalty of $8,000, with sufficient surety approved by the court; that subsequently, on the 28th day of February, 1882, the said appeal was dismissed by the general term for want of jurisdiction, and thereafter the receiver qualified by giving a bond, and

now demands the rents covered by said superseded order
124 which accrued to the dismissal of said appeal, and as well proposes to demand subsequently accruing rents. They show that by the deed, a copy of which is Exhibit G. S. P. No. 3 with complainant's bill, the furniture contained in said house was conveyed by said Shepherd to said Cross and to one Willard and one Taylor, and that said Bartlett and Bacon were subsequently substituted for said Willard and Taylor, as appears by the bill, as trustees, and that under said deed said Shepherd is entitled to collect the rents of said furniture and other property, and covenants to use and apply the same for the benefit of the creditors secured by said deed of trust.

That the furniture contained in said house is of the most elegant and expensive kind, and formed the principal inducement in the renting of the house and furniture to the Chinese embassy; that the proper proportion of said rent accruing from said furniture is at least one-half of the entire rent.

That the complainant in this cause does not pretend to have any right or claim to or against said furniture or the rent thereof, yet, nevertheless, the said order of injunction, merely because the said rent has not been apportioned between the house and furniture, re-
strains your petitioners and their agents from collecting any
125 rent of said furniture until the final hearing of the cause, and orders them to pay over certain rents collected.

That said rent can be readily apportioned upon reference to the auditor for that purpose, and the rights of your petitioners and of the creditors of said Shepherd be hereby protected to the extent of such apportionment, and they respectfully submit that a just regard for their rights and the rights of said creditors who are represented by them requires; that the said order of injunction should be so modified as to affect and included only the rent of the real estate.

They therefore pray that the said order may be so modified as to cover only such portion of the rent of said house and furniture as, upon reference to the auditor for that purpose, may be found to be property rent of the real estate.

2. That the cause may be referred to the auditor to examine, take proofs, and apportion the said rent and report to this court.

3. And that they may have such other and further relief in the premises as the nature and circumstances of the case may re-
quire.

126 ALEX. R. SHEPHERD,
By WM. F. MATTINGLY AND
A. C. BRADLEY,
Attorneys-in-Fact.
SAMUEL CROSS.
PETER F. BACON.
DAVID L. BARTLETT.

WM. F. MATTINGLY,
A. C. BRADLEY,
ENOCH TOTTEN,
Solicitors.

Filed Mar. 31, 1882. R. J. Meigs.

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
ALEXANDER R. SHEPHERD *et al.* } 7803, Equity.

It is this 31st day of March, 1882, hereby stipulated and agreed by and between the undersigned counsel as follows:

That Messrs. William F. Mattingly and Andrew C. Bradley shall forthwith enter their general appearance in this cause for the defendants, Alexander R. Shepherd, Mary G. Shepherd, William F. Mattingly, and David L. Bartlett, and shall file the answer of all of said defendants on or before June 1st, 1882, subject to such further
127 extension of time as the court may grant or cause to be shown.

It is agreed that the answer of Alexander R. Shepherd and Mary G. Shepherd may be filed without oath, but signed by themselves. It is further agreed that this cause be referred to the auditor of this court, with directions to him to ascertain and report the proportions of rent due, respectively, for sub-lot three (3), in square No. 164, with the improvements thereon, known as premises No. 1705 K street N. W., Washington, D. C., and for the furniture now in and upon the said premises; and it is further agreed that when such proportions shall have been ascertained as aforesaid and approved by the court the said Mattingly and Bradley shall forthwith pay over unto the receiver in the cause the proportion of rents and moneys collected by them from said premises as ascertained by the auditor to be payable in report of said sub-lot three (3) and the improvement thereon, and the said receiver shall pay over to said Shepherd or his counsel of record such proportion of the rents as shall come into the hands of said receiver as are found by the auditor to be properly allowable as rent for the use of said furniture.

And it is further agreed that this said receiver, after pay-
128 ing over to the said Shepherd or his counsel of record the proportioners of rent ascertained as aforesaid to be payable for the use of said furniture from the rents collected by him, shall retain the residue of all the rents coming into his hands by virtue of the decree of December 1, 1881, until the final hearing of this cause, subject only to such order as the court may hereafter make as to the payment of taxes, insurance, and repairs on said sub-lot three (3), square 164, and the improvements thereon, and to any rights which the defendant, A. R. Shepherd, may have to work for the dissolution of the injunction and the discharge of the receiver after the filing of the said answer herein.

By consent to the above—

WM. F. MATTINGLY,
A. C. BRADLEY,
Sol'rs for Alexander R. Shepherd, Mary G. Shepherd, William F. Mattingly, David L. Bartlett, Cross, Bacon, & Bradley.
NATH'L WILSON,
HANNA & JOHNSTON,
Counsel for G. S. Pepper.
HENRY WISE GARNETT,
Sol'r for Mercy M. C. Gray & Trustee.

129 *Reference to Auditor to State Rents. Filed Mar.* 31, 1882. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

PEPPER *vs.* SHEPHERD *et al.* } 7803, Equity.

It is this 31st day of March, 1882, ordered that this cause be, and is hereby, reformed to the auditor of this court under the stipulation of counsel filed herein, with instruction to take testimony and report the proportion of monthly-rental property belonging to sub-lot 3, square 164, and the improvements therein, and to the furniture therein, respectively.

A. B. HAGNER,
Asso. Justice.

Answer of Mary G. Shepherd. Filed June 1, 1882. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER *vs.* ALEXANDER R. SHEPHERD *et al.* } No. 7803, Equity.

The answer of Mary G. Shepherd, one of the defendants, to the bill of complaint of the above-named plaintiff.

For answer into said bill or into so much thereof as I am
130 advised it is material for me to make answer, I say—

I admit that I am the wife of defendant, Alexander R. Shepherd, and that I executed the several deeds as referred to and alleged in the bill of complaint.

MARY G. SHEPHERD.

Affidavit waived.
HANNA & JOHNSTON, *For Compl't.*

Answer of Alex. R. Shepherd. Filed June 1, 1882. *R. J. Meigs.*

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER, Complainant, *v.* ALEXANDER R. SHEPHERD, MARY G. SHEPHERD, MERCY Maria Carter Gray, James E. Fitch, Lewis J. Davis, Andrew C. Bradley, William F. Mattingly, James M. Johnston, David L. Bartlett, Peter Bacon, Samuel Cross, John Alexander, George M. Barker, Defendants.	In Equity. No. 7803.

The separate answer of Alexander R. Shepherd, one of the defendants, to the bill of complaint of the above-named complainants.

1, 2, 3, 4. I admit the allegations of paragraphs one, two, three, and four, except that I aver that the defendant Bartlett is a resident of Baltimore, State of Maryland, and that John Alexander is dead.

131 5. I admit that the plaintiff was the owner and holder of the promissory notes for $35,000 and $10,000, as he claims in paragraph five, and that defendants, Mercy M. C. Gray, owns and holds the other said note for $35,000, and that said notes are all overdue and unpaid; but I do not know what amount of interest is due upon said notes or what amount has been paid by complainant for taxes and insurance, and I do not admit the allegations relating thereto, and call for strict proof thereof. I deny that the statement marked Exhibit G. S. P. No. 1, filed with the bill, is a correct or just account of said interest, insurance, and taxes, or that the said amount is secured by the said deeds of trust, and I aver that said statement shows that the plaintiff has compounded the interest upon said interest upon said notes and charged interest upon taxes and insurance claimed to have been paid by him at the rate of nine per centum per annum, and that the aggregate amount is thus wrongfully increased $4,582.

6. I admit that I did convey as alleged in paragraph six.

6½. I admit that the parties secured under the deed of trust mentioned in paragraph six are numerous, but I aver that most

132 of them have been paid, and that both said John Alexander and George M. Barker have been paid, and that the number of those who hold unsettled claims are few.

7 & 8. I admit the allegations of paragraphs seven and eight.

9. I admit that the plaintiff filed a bill in equity, being cause No. 6201, equity, and that the decree recited was rendered therein and an appeal taken therefrom to the court in general term by this defendant; that said Philip and Johnston, trustees, advertised the property for sale, and that a petition was filed in said cause, signed in my behalf by defendant Bradley, as my attorney-in-fact, to enjoin said sale, and that the prayer of said petition was denied, and I am informed and believe and therefore aver that the said petition

was denied solely on the ground that, an appeal having been taken to the court in general term, the special term was without jurisdiction to entertain said petition; but I deny that the plaintiff has correctly stated the allegations of the bill of complaint on the proceedings in said cause in so far as he has pretended to state them, as will appear by said bill and other proceedings in said cause, which I pray may be read and considered as part of this
133 my answer, and say that the allegation of the 10th paragraph of said bill is as follows:

That "he did, in writing, order and request the trustees under said deeds of trust (to secure him)," meaning the two deeds of trust referred to in this bill, "to advertise said real estate for sale, but that said defendant, Andrew C. Bradley, one of the trustees under both of said deeds of trust, refused so to do;" and that said bill prayed "that a trustee be, by order of this honorable court, appointed in place and stead of the trustees under said deeds of trust first mentioned, with directions and authority to fourthwith execute all the trusts reposed in them, respectively, by the said deeds of trust;" and he also prayed for such other and further relief as the circumstances of the case might require; and I aver that said bill was and is a bill to foreclose the said deeds of trust by the order and direction of this court through its officer or officers.

10. I admit that said property was sold by said Johnston and Philip, claiming to act as trustees under the first of said deeds of trust, to said complainant, and that they conveyed said property to him in fee as such purchaser, and that I subsequently filed
134 a bill in cause No. 7052, equity (having first dismissed the appeal in cause No. 6201), to set aside said sale, and that the defendant Pepper, the complainant in this cause, filed therein an answer and a cross-bill, and a decree was rendered dismissing said bill, and an opinion subsequently filed in said cause, a copy of which is Complainant's Exhibit G. S. P. No. 2; but I am advised and therefore deny that the court dismissed said bill for want of jurisdiction, and I refer to said bill, answer, and cross-bill as part of this answer, and say that by said cross-bill the complainant Pepper prayed for injunction and receiver, and his right to such relief was adjudicated in said cause.

11. I admit that the opinion referred to was, by the court in general term, ordered to be stricken from the files as no part of the record, and deny that there was any other adjudication in said cause than the decree dismissing the bill of complaint, and thereby carrying with it the cross-bill.

12. I admit that the portion of ground known as lot "A" is not included in the deeds of trust given to secure the plaintiff,
135 and that the land therein included does not embrace all that is covered by the dwelling-house, and that it is included in the deed of trust to secure the defendant Gray; but I deny that the omission was an accident or a fraud on my part or on the part of my agents, and I aver that it was not done by my suggestion or procurement, and that the said deeds were prepared by real-estate agents, to whom the whole business of making the said loans and

preparing the papers therein had been entrusted by the plaintiff, and who were his agents in the matter; and I deny that the plaintiff has the right to have said deeds corrected so as to include the said piece of land.

13. I deny that I made or had any agreement or contract other than the said deeds of trust or had any interview or any correspondence with the plaintiff in relation to the security for said loans, and I aver that the whole matter was arranged and the papers prepared by the agents of the plaintiff, and that I signed the same without noticing that the notes and bonds excluded the rear portion of the lot. I deny that by the omission the plaintiff's security was se-
136 riously impaired or made grossly inadequate, or that it caused him irreparable injury, and say that the plaintiff, by his bill in cause 6201, equity, insisted upon his right to have sold the property as described in his said deeds of trust, and did not ask to have said alleged defective description corrected, and in relation to said matter said as follows: "The part of said house not included in the deeds of trust to secure him is what is known as the picture gallery, and is situated on what is known in the tax office of the District of Columbia as sub-lot 'A,' square 164, and he charges that said picture gallery is — feet long, and that the rear end of about — feet long could be detached without marring or in anywise lessening the value of said property," as will fully appear upon reference to paragraph 12 of said bill; and I aver that since the filing of said bill the plaintiff has not in any manner sought, up to the time of the filing of this bill, to have said alleged defect in said deeds of trust corrected, but in said bill in cause No. 6201, equity, claimed to have and since has procured to be sold and has pur-
137 chased, received a deed for, and claimed to have title to the land and premises described in said deeds of trust.

I admit that I executed the said deeds of trust in the belief that the whole property covered by the house was embraced in them, but deny that I have said or that the fact is that the description was due to accident or mastake of mine or of my agents, and I deny all fraud in the matter, either on my part or of my agents, directly or indirectly.

14. I am informed to the contrary as to the averments of paragraph 14, and therefore deny that they are true, and I am advised that Mrs. Gray's lien is paramount to the plaintiff's on the said rear portion of said lot, and that the plaintiff has no lien thereon and no equitable mortgage.

14½. I deny that I have perfected my title to sub-lot "A" by buying in adverse claims, and I deny that I paid for the same out of my own means, and deny that the title is in me or in some friend as trustee for me, and I deny all fraud in connection therewith, and I say that the plaintiff is not entitled to any other or further
138 answer in that regard as to any relief as to said lot, and I claim the same benefit of this objection as if I had demurred to the bill on that ground.

15. I do not know what interest, insurance, and taxes have been unpaid, as I have not the information within my reach, and I call

for strict proof, but I am informed and believe that all arrears of taxes were paid by plaintiff at the time of his purchase of said property, and that the only tax due on it at the time the bill was filed was for the year ending June 30, 1881; and I further say that the plaintiff had said deed to him of said property recorded, and the same is now assessed on the tax books of this District in his name.

I admit that for one year ending March, 1880, the house and premises and the furniture contained in said house was rented to a tenant who paid the rent for the sum of $6,000, and that on the first day of November, 1880, the house and furniture were rented under a lease to the Chinese embassy, and that they are prompt
139 tenants, and I deny that the said house has been otherwise rented at all, and I deny that I have been receiving rent at that rate for several years.

I admit that no portion of this rent has been paid to said plaintiff, and say that ever since June, 1880, the plaintiff has been seeking first to enforce a sale of the portion of the premises covered by his deeds of trust, and, since purchasing at such sale and obtaining a deed of said premises, has sought in every way to gain possession of said premises, and by his cross-bill in cause No. 7052, equity, which is prayed to be read and considered as part of this answer, he sought to have a receiver appointed to collect said rents and an injunction to prevent me from receiving them *them*, and a writ of assistance to put him in possession of said premises.

16. I deny that the incumbrances and liens upon said property amount to $120,000, and say that, so far as the claims of said plaintiff are concerned, his statement of account filed with his bill shows that he has sought to enlarge them by wrongfully compound-
140 ing the interest at nine per centum on the principal debt and by charging interest at the same rate per annum upon taxes and insurance paid by him.

And I aver that the said premises cost me over $180,000, and that either in whole or the part embraced in the description contained in his deeds of trust are adequate security for more than the amount of the plaintiff's alleged claim.

And I deny that I am insolvent, and aver that since I went to Mexico I have acquired property that will much more than enable me to pay all of my debts. I aver that since November 15, 1876, the date of the deed of trust to secure my creditors, I have paid to my creditors in real estate, cash, and securities, in settlement of debts, about $1,200,000, of which sum about $330,000.00 was in cash, and that the unsatisfied judgments against me are few and small in amount, and some of them are contested. I deny that my unsecured debts amount to $310,000, or anything like that sum, inasmuch as most of my said creditors have been settled with.

17. I know nothing of the averments of the 17th paragraph, and do not admit them.

141 18. I do not know as to the matters contained in the 18th paragraph, and if the same are material I call for proof.

And, further answering, I say that I am advised and therefore aver that the heirs of William H. Philip are necessary parties to

this suit and that they have been omitted, and ask the same benefit of said objection as if I had demurred to said bill for that cause.

And, further answering, I say that under and by the said deeds of trust the complainant has no right to the rents of said house or so much thereof as is embraced in said deeds of trust, and much less has he any right to the rent of the furniture contained in said house; nor had he the right to the possession of said house or land or premises; nor have the trustees under said deeds any right to the possession of said property; nor has the complainant any interest in said land and premises under said deeds of trust or any right under said deeds, except to have said land and premises sold and
142 to have his claims paid out of the proceeds of such sale.

And, further answering, I say that the whole subject-matter of this bill as against me is embraced in the said cause No. 6201, equity, which is still pending; and if the complainant is entitled to any relief by reason of the various matters set up in this bill, he must seek such relief in said cause No. 6201, equity, by bill of review or otherwise, and he claims the same benefit of the said objection to this bill as if he had specially pleaded the same in bar. As to the various matters of law alleged in said bill I am advised that it is unnecessary for me to make answer. I am advised, and therefore charge and aver, that the complainant has no right in this collateral proceeding to attack said decrees in said equity causes No. 6201 and No. 7052.

And having answered fully, &c.,

ALEXANDER R. SHEPHERD.

I do solemnly swear that I have read the foregoing answer by me subscribed and know the contents thereof, and that
143 the facts therein stated upon my personal knowledge are true, and that the facts therein stated upon information and belief I believe to be true.

ALEXANDER R. SHEPHERD.

Subscribed and sworn to before me this third day of May, A. D. 1882.

LYNDON H. STEVENS,
U. S. Consular Agent at Batapilas, Mexico.

Motion to Amend Bill. Filed Jun- 20, 1882. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
ALEXANDER R. SHEPHERD. } No. 7803. Equity.

And now comes complainant, by Messrs. Nathaniel Wilson and Hanna & Johnston, his solicitors, and moves the court for leave to amend his bill of complaint herein (and without any prejudice to the injunction granted by the order passed herein on December 1,

for strict proof, but I am informed and believe that all arrears of taxes were paid by plaintiff at the time of his purchase of said property, and that the only tax due on it at the time the bill was filed was for the year ending June 30, 1881; and I further say that the plaintiff had said deed to him of said property recorded, and the same is now assessed on the tax books of this District in his name.

I admit that for one year ending March, 1880, the house and premises and the furniture contained in said house was rented to a tenant who paid the rent for the sum of $6,000, and that on the first day of November, 1880, the house and furniture were rented under a lease to the Chinese embassy, and that they are prompt
139 tenants, and I deny that the said house has been otherwise rented at all, and I deny that I have been receiving rent at that rate for several years.

I admit that no portion of this rent has been paid to said plaintiff, and say that ever since June, 1880, the plaintiff has been seeking first to enforce a sale of the portion of the premises covered by his deeds of trust, and, since purchasing at such sale and obtaining a deed of said premises, has sought in every way to gain possession of said premises, and by his cross-bill in cause No. 7052, equity, which is prayed to be read and considered as part of this answer, he sought to have a receiver appointed to collect said rents and an injunction to prevent me from receiving them *them*, and a writ of assistance to put him in possession of said premises.

16. I deny that the incumbrances and liens upon said property amount to $120,000, and say that, so far as the claims of said plaintiff are concerned, his statement of account filed with his bill shows that he has sought to enlarge them by wrongfully compound-
140 ing the interest at nine per centum on the principal debt and by charging interest at the same rate per annum upon taxes and insurance paid by him.

And I aver that the said premises cost me over $180,000, and that either in whole or the part embraced in the description contained in his deeds of trust are adequate security for more than the amount of the plaintiff's alleged claim.

And I deny that I am insolvent, and aver that since I went to Mexico I have acquired property that will much more than enable me to pay all of my debts. I aver that since November 15, 1876, the date of the deed of trust to secure my creditors, I have paid to my creditors in real estate, cash, and securities, in settlement of debts, about $1,200,000, of which sum about $330,000.00 was in cash, and that the unsatisfied judgments against me are few and small in amount, and some of them are contested. I deny that my unsecured debts amount to $310,000, or anything like that sum, inasmuch as most of my said creditors have been settled with.

17. I know nothing of the averments of the 17th paragraph, and do not admit them.

141 18. I do not know as to the matters contained in the 18th paragraph, and if the same are material I call for proof.

And, further answering, I say that I am advised and therefore aver that the heirs of William H. Philip are necessary parties to

this suit and that they have been omitted, and ask the same benefit of said objection as if I had demurred to said bill for that cause.

And, further answering, I say that under and by the said deeds of trust the complainant has no right to the rents of said house or so much thereof as is embraced in said deeds of trust, and much less has he any right to the rent of the furniture contained in said house; nor had he the right to the possession of said house or land or premises; nor have the trustees under said deeds any right to the possession of said property; nor has the complainant any interest in said land and premises under said deeds of trust or any right under said deeds, except to have said land and premises sold and
142 to have his claims paid out of the proceeds of such sale.

And, further answering, I say that the whole subject-matter of this bill as against me is embraced in the said cause No. 6201, equity, which is still pending; and if the complainant is entitled to any relief by reason of the various matters set up in this bill, he must seek such relief in said cause No. 6201, equity, by bill of review or otherwise, and he claims the same benefit of the said objection to this bill as if he had specially pleaded the same in bar. As to the various matters of law alleged in said bill I am advised that it is unnecessary for me to make answer. I am advised, and therefore charge and aver, that the complainant has no right in this collateral proceeding to attack said decrees in said equity causes No. 6201 and No. 7052.

And having answered fully, &c.,

ALEXANDER R. SHEPHERD.

I do solemnly swear that I have read the foregoing answer by me subscribed and know the contents thereof, and that
143 the facts therein stated upon my personal knowledge are true, and that the facts therein stated upon information and belief I believe to be true.

ALEXANDER R. SHEPHERD.

Subscribed and sworn to before me this third day of May, A. D. 1882.

LYNDON H. STEVENS,
U. S. Consular Agent at Batapilas, Mexico.

Motion to Amend Bill. Filed Jun- 20, 1882. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
ALEXANDER R. SHEPHERD. } No. 7803. Equity.

And now comes complainant, by Messrs. Nathaniel Wilson and Hanna & Johnston, his solicitors, and moves the court for leave to amend his bill of complaint herein (and without any prejudice to the injunction granted by the order passed herein on December 1,

1881, and without prejudice to the existing receivership) by adding to the first paragraph of the 16th section of said bill the
144 following:

Complainant further says that the said real estate known as lot No. 3 in square No. 164, with the improvements thereon, is wholly insufficient security for the debt admitted by the defendant, Alexand'r R. Shepherd, to be due to complainant and charged thereon; and that said lot and improvements cannot now be sold for a sum sufficient to meet the debt admitted by the said defendant, Shepherd, to be due to complainant and charged thereon; nor will said lot and improvements yield from rents an adequate income on the value of said lot and improvements, even assuming such value to be equal to the amount of the debt admitted by said defendant, Alexander R. Shepherd, to be due to complainant and charged on said lot and improvements."

And, further, for leave to amend his said bill, without prejudice to said injunction and receivership, by adding thereto as the 19th paragraph the following:

"Complainant further states that the said Philip died intestate, leaving surviving him a widow and four children, the defend-
145 ants, John Van Ness Philip, Hermann Hoffmann Philip, Gaston Pearson Philip, and Elizabeth Worthington Philip, all whom are infants under the age of 21 years, and aged respectively 16 years, 9 years, 8 years, and 6 years."

And, further, for leave to amend his said bill, without prejudice to said injunction and receivership, by adding thereto as the 20th paragraph the following:

"Complainant is willing to surrender, and hereby surrenders, for the purpose of a resale of the said real estate, any title in fee simple which he may have thereto by reason of the deed to him from William H. Philip and James M. Johnson, trustees, recorded in Liber 923, folio 39, of the land records of the District of Columbia; and for the purpose of reselling the said real estate in this proceeding, complainant waives any interest, claim, or title vested in him by the said deed in fee simple, and complainant hereby offers to make any conveyance which the court may deem necessary or proper to accomplish the purpose indicated."

And, further, for leave to amend the said bill, without prejudice to said injunction and receivership, by inserting after the
146 word "defendants," in the fourth prayer of said bill of complaint, the following names:

Alexander R. Shepherd, Mary G. Shepherd, Mercy Maria Carter Gray, Lewis J. Davis, William F. Mattingly, David L. Bartlett, Samuel Cross, James E. Fitch, Andrew C. Bradley, James M. Johnston, Peter Bacon, George M. Barker, John Van Ness Philip, Hermann Hoffman Philip, Gaston Pearson Philip, and Elizabeth Worthington Philip.

And, further, for leave to amend his said bill, without prejudice to said injunction and receivership, by omitting from paragraph 6½ the name of John Alexander," as said Alexander has died since the original bill in this cause was filed, and as complainant is informed

that said Alexander has been paid in full and his legal representative no longer has any interest in this suit; and, further, by inserting the words "is made party as the representative," in lieu of the words "are made parties as representatives," in said paragraph 6½.

And, further, for leave to amend his said bill, without prejudice to the injunction and receivership, by adding the following prayer:

147 That subpœnas may issue to the defendants, Alexander R. Shepherd, Mary G. Shepherd, Mercy Maria Carter Gray, Lewis J. Davis, William F. Mattingly, David L. Bartlett, Samuel Cross, James E. Fitch, Andrew C. Bradley, James M. Johnston, Peter Bacon, George M. Barker, John Van Ness Philip, Hermann Hoffman Philip, Gaston Pearson Philip, and Elizabeth Worthington Philip, commanding them and each of them to appear and answer the amended bill of complaint herein.

N. WILSON,
HANNA & JOHNSTON,
For Compl't.

Please take notice that on Friday, the 23d day of June, A. D. 1882, at 10 o'clock a. m., or as soon thereafter as counsel may be heard, we will call up before the court for hearing the above motion.

N. WILSON,
HANNA & JOHNSTON,
For Compl't.

To Messrs. Wm. F. Mattingly & A. C. Bradley, of counsel for def'ts.

Copy served this a. m., June 20, 1882.

148 *Order Authorizing Receiver to Repair House. Filed Jun-* 28, 1882. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

PEPPER *vs.* SHEPHERD *et al.* } No. 7803. Eq.

Upon the petition of the receiver, F. P. B. Sands, this day filed, the same being duly considered, it is this 28th day of June, 1882, ordered that said receiver be, and he is hereby, authorized to cause the injured ceiling of the library in house No. 1705 K St. to be repaired as may, upon examination, be found necessary and proper, and that he pay the expense of such examination and repair from the funds in his hands as receiver in this cause, and that he be allowed for said expenditure in the settlement of his accounts as receiver.

A. B. HAGNER,
Asso. Justice.

Report of Receiver. Filed Jun- 28, 1882. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

PEPPER
vs.
SHEPHERD *et al.* } 7803. Equity.

The undersigned, the receiver in this cause, respectfully submits that he this morning was notified by message from the ten-
149 ant in possession of house No. 1705 K street that on yesterday, the 27th inst., a large part of the ceiling in the library fell to the floor, defacing its appearance, and calling for immediate examination and repairs; and in view thereof, and for the proper comfort of the tenants of the premises, your petitioner, as receiver, respectfully asks the authority of this court to have said ceiling examined and proper and suitable repairs made, and that he pay the cost thereof from the funds in his hands as such receiver, and that he be allowed therefor in stating his accounts as receiver herein.

Respectfully submitted.

F. P. B. SANDS, *Receiver.*

150 *Amendment to Bill Authorized. Filed Jun-* 29, 1882. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
ALEXANDER R. SHEPHERD *et al.* } No. 7803. Eq.

On consideration of the motion of complainant for leave to amend his bill of complaint in the particulars set fourth in the motion filed herein on June 20, 1882, and without prejudice to the existing injunction & receivership, and said motion having been argued by the counsel for complainant and defendants, respectively, it is by the court this 29th day of June, 1882, ordered that said complainant have leave to amend his said bill in accordance with said motion, & without prejudice to the existing injunction & receivership.

And it is further ordered that complain't pay the costs of the said amendment.

A. B. HAGNER,
Asso. Justice.

151 In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
ALEXANDER R. SHEPHERD *et al.* } No. 7803. Equity Docket, 21.

Report of Auditor.

This cause is referred to the auditor under a stipulation of counsel

filed on the 31st of March, 1882, with instructions to take testimony and report the proportion of monthly rental property belonging to sub-lot 3 in square 164, and the improvements thereon and the furniture therein, respectively.

After due notice, I proceed to execute this order of reference, and return herewith the deposition submitted by the parties on either side.

The property in question is known as premises No. 1705 K street N. W., and was built and furnished by ex-Gov. Shepherd for his occupancy, and was for some years used by him as a residence. The dwelling upon the property is capacious and substantial, and it is furnished in a corresponding style. Quite a number of
152 witnesses have been called and examined in this reference as experts, the general hypothetical question being substantially, "This property, house, and furniture is rented on monthly letting at $500 a month; what, in your opinion, would be a fair proportion of that rent for the furniture?" The opinions and answers of these witnesses vary in amount from $125 to $250 per month. There is also some proof in the case touching the cost and value of the furniture, which as to the latter also varies in amount. Some of the witnesses who have testified as to the proper proportion or division of the rental appear to be well qualified as experts, while others are less qualified. Taking the testimony of the witnesses, Warner, Duncanson, Huyck, and Fisher, upon the one side, and Waggaman, Fox, Hellen, Sprigg, and Kennedy, upon the other, an average of the values testified to by them would be a little short of $200 per month. Taking this testimony, together with that showing the value and condition of the furniture, its adaptability to the house, and that of the house to the furniture, and the other
153 circumstances as to location, size, and availability of the property for the purposes of rental, I think a fair apportionment of the rental specified in the stipulation as received for both house and furniture would be $300 per month for the lot and improvements and $200 per month for the furniture.

June 14, 1882.

——— ———, *Auditor.*

Auditor's fee, $50.

FRIDAY, *April* 7, 1882.

Hearing pursuant to notice.

Present: Mr. Hanna, for the plaintiff.

At the request of Mr. Mattingly, solicitor for the defendant, the hearing is adjourned to Tuesday, April 11th, at 2 p. m.

TUESDAY, *April 11th*, 1882.

Hearing pursuant to adjournment.

Present: Mr. Hanna and Mr. Johnston, for the complainant; Mr. Mattingly, for the defendant; Mr. A. C. Bradley, for the defendant.

154 BRAINARD H. WARNER sworn, and examined by Mr. MATTINGLY:

Q. State your name, age, residence and occupation.

A. My name is Brainard H. Warner; I will be 35 years of age next month; my residence is Washington, D. C.; I am a real estate broker.

Q. Is part of your business the renting of houses in this city, furnished and unfurnished?

A. It is.

Q. How long have you been engaged in that business?

A. Since 1869.

Q. Are you familiar with the property involved in this suit—of Gov. Shepherd's—at the corner of Connecticut Ave. and K St.?

A. I am.

Q. Have you been in the house and seen how it is furnished?

A. I have been in the basement and first and second story.

Q. That property, both house and furniture, is rented to the Chinese embassy at $500 a month, as monthly tenant. State what, in your opinion, would be a fair and just proportion of that rent for the furniture.

A. I should think about one-half would be fair.

155 Cross-examination:

Q. Do you mean if the house would rent for $250 per month that rent would be increased to $500 per month if the house were furnished and rented by the year?

A. I should think that in this particular instance that $250 per month would be a small rent for the furniture.

Q. Is one-half of the total rent for a furnished house the usual proportion, or do you mean to say that this case is peculiar?

A. I think this is a peculiar case. It is represented to me that the furniture was manufactured with reference to this particular house, and much of it is of a delicate and perishable nature. The fact that the house is occupied by a foreign legation would seem to subject it to more than the usual ordinary wear and tear.

Q. Do you know how long the furniture has been in the house?

A. I understand from the time Gov. Shepherd occupied it.

Q. When was that?

A. I don't know exactly.

Q. Approximate it.

A. I should say since 1875; somewhere along there.

156 Q. When did you last see the furniture?

A. I was in there once when Senator Cameron lived there.

Q. How long ago was that?

A. Several years.

Q. Do you know the present condition of the furniture?

A. Of course not.

Q. Where property is rented furnished what is the usual percentage of depreciation in the value of the furniture per annum?

A. I really cannot say. It depends on the carefulness of the

tenant. Legations are supposed to be less careful than ordinary tenants.

Q. Could you say what would be the usual depreciation in furniture when used by a tenant for, say, five years?

A. I could only guess.

Q. Guess.

A. I should say from 25 to 33 per cent. for the first five years.

Q. Where furniture is made especially for particular houses so that it would be in part unavailable for other property, would not the value of that furniture be ordinarily much less in its ap-
157 praised value than furniture which could be used in any resident's property?

A. It would not be as valuable to sell in the market, but might be of special value with reference to a particular house.

Q. What relations as to amount does the rent of the furnished house — to the value of the furniture in ordinary cases?

A. It would depend a great deal upon the house and the style in which it was furnished; some houses are much more elegantly furnished than others.

Q. What would you regard as a fair percentage in this case?

A. I should say that $250 per month is an exceedingly low rent for the furniture in this house.

Q. If $250 is the rental value of the furniture, what do you regard as the value of the furniture itself?

A. I understand the furniture in this case is worth somewheres from $30,000 to $60,000.

Q. Worth now?

A. That is what I understand.

Q. You are not willing to state that it is worth from $30,000 to $60,000, are you?

A. Of course I cannot make any statement as to its value which would be accurate.

158 Q. Is it not a fact that this house was furnished at an unusual and an unnecessary cost for the articles actually placed in the premises?

A. Common rumor would lead me to think that such was the case.

Q. In the case of a house renting for $6,000 per annum what would be the usual proportion of the increase of rent because of the fact that such house was furnished?

A. From $2,000 to $3,000, ordinarily.

Q. If a house rents for $6,000 furnished what would that same house ordinarily rent for unfurnished?

A. I should say for about $3,000.

Q. Than you mean to say that in a house of that character the rent would be more than double if furniture were added?

A. I should say about double—depending, of course, largely upon the furniture, which in a house renting for $6,000 per annum is supposed to be very elegant.

Q. How many houses have you under rent, furnished, from which

you collect the same amount of rent for the furniture that you do for the house?

A. I cannot answer that; it depends largely upon what the owners value the furniture at. I have no house under rent
159 where the furniture is nearly as valuable as in this house.

BRAINARD H. WARNER.

JESSIE V. N. HUYCK sworn.

Examined by Mr. MATTINGLY:

Q. State your age, residence, and occupation.

A. I am 43 years of age; residence, Washington city; and occupation, real estate agent.

Q. How long have you been engaged in that business?

A. About 16 years.

Q. Has your business included the renting of houses in this city, both furnished and unfurnished?

A. It has.

Q. Are you familiar with the late residence of Gov. Shepherd, at the corner of Connecticut Ave. and K St.?

A. I am.

Q. Have you seen how the house is furnished?

A. I have.

Q. That house and furniture is rented to the Chinese embassy, as monthly tenant, at $500 per month. Of that monthly
159½ rental what, in your opinion, would be a fair and just proportion as rent for the premises?

A. One-half.

Q. State generally the basis of your opinion.

A. I regarded from my experience and information that one-half of the rental of a furnished house is a fair estimate of the furniture's rent.

Q. Would it, in your opinion, be practicable to rent this house unfurnished?

A. I think not.

Cross-examination:

Q. Would it be practicable to rent the furniture if removed from the house?

A. I think it would.

Q. When did you last see that furniture?

A. To-day.

Q. What would be the rental value of that furniture if removed from the house?

A. I think that if it were placed in a similar house it ought to rent for from $3,500 to $4,000 per annum.

Q. Have you ever known an instance where the furniture suitable for a private residence has rented for any such sum as you have named?

A. I have not.

160 Q. What is the largest price per annum for which you have known any furnished house to rent in this city?

A. I am not sure; I think the highest price has been $400 per month.

Q. To whom or to what class of persons could you expect to rent furniture similar to that in this house at any such price as $3,000 or $4,000 per annum?

A. I would expect to rent to civilians and for private residences.

Q. Have you ever known an instance where second-hand furniture has been rented for private residences for as much as $2,000 per annum?

A. I have not.

Q. If you had such furniture on your hands, is it not probable that the depreciation in value from storage and the cost of storage would about consume any rent likely to be received for the use of such furniture, especially when furniture is of the superior quality?

A. I think not.

Redirect:

161 Q. You said something about what you could rent that furniture for if in the Brodhead house, which was not put down, what was it?

Question withdrawn.

Q. If you had that furniture in the Brodhead house what could you rent it for, in your opinion?

A. I think I could rent the house and furniture for $12,000 per year.

Q. How much of that would be for the furniture?

A. About one-half.

Recross:

Q. Have you ever known of any such extravagant figures for house or for furniture, or for both, having been paid in Washington within the last five or six years?

A. There have been no houses of the character of the Brodhead house to rent within that period of time, to my knowledge.

Q. Have you any houses furnished where you get as much as double the rent by reason of the furniture being in them?

A. I do get double the rent by reason of houses being furnished.

162 Q. Can you name a single instance in which the rent of a house has been double by reason of the addition of furniture?

A. A furnished house generally rents for two-thirds in excess of what it would bring unfurnished. For instance, a house that rented for $50 per month unfurnished would rent for about $150 furnished.

Q. Can you name a single illustration where that has occurred?

A. Yes.

Q. Can you name any single house?

A. I would have to refer you to my clerk and my own books.

J. V. N. HUYCK.

Adjourned to Wednesday, April 12, at 10 a. m.

WEDNESDAY, *April* 12, 1882.

Hearing pursuant to adjournment.
Present: Mr. Bradley, Mr. Johnston.

ELI L. STIESON, sworn.

Examined by Mr. BRADLEY:

Q. Please state your name, age, residence, and occupation.
A. I am 44 years of age; I am a clerk in the 6th auditor's office; residence, 2016 F St. N. W.
Q. Are you familiar with the property, corner of K and Connecticut Ave., lately the residence of ex-Gov. Shepherd?
163 A. I know where it is located, and have been through every room in the house.
Q. If you went there with any members of the Chinese legation before they rented the same will you please state for what purpose you went with them?
A. I learned that they wanted to rent a house, and I knew that the one owned by the Governor was available, and I recommended that they should look at it, as they had looked at one or two houses before, and after seeing you and getting the pass of admittance to the house I went with them. We looked the house over, and they were very much pleased with it.
Q. Do you know what other house, furnished, they had under consideration at that time?
A. They had under consideration the house of ex-Attorney General Williams on Rhode Island Ave. After we had looked the Governor's house over we went to the house of Mr. Williams, and they asked my opinion of the two houses.
Q. You saw the Williams house, did you not?
A. I did.
164 Q. Do you know what rent was demanded for the Williams house furnished?
A. I was told by the nephew of the minister that Mr. Williams asked $6,000 per year; $500 per month.

Mr. Johnston objects to the answer.

Q. Was there any one representing the owner of the house present at the time you went to Mr. Williams' house?
A. No one but the servants of the house.
Q. Did you notice the character of the furniture in that house?
A. I did.
Q. How did it compare with the furniture in the Shepherd house in quality and other respects?
A. I thought there was no comparison at all. As to elegance the Governor's furniture was far superior.
Q. What influence did the furniture contained in the Shepherd house have upon its renting to the Chinese embassy? State anything you heard said by them on that occasion.

Objected to by Mr. Johnston.

A. I can state what they said. They expressed to all of us the opinion that the furniture was very superior to that in
165 Mr. Williams' house. One thing in particular I remember. The curtains to the front windows were brought out and shown us. They admired the lace curtains very much. I don't remember anything more being said. Mr. Bartlett, the interpreter of the embassy, was also there. He expressed to me, as we stepped out of the door, the opinion that there was no comparison between the houses. Those were the very words he used, "no comparison between the houses."

Q. Do you remember whether the Chinese embassy required any additional furniture to be put in the house before they would take it?

A. I was sent to Mr. Bradley expressly to request that additional furniture be put in.

Q. Do you know the occasion of that?

A. It was to accommodate several members of the embassy with additional beds. Five beds, I think, were required before they would consent to take the house—five additional beds.

Q. Do you remember how many there were who were connected with the embassy at that time? Had the embassy been increased just at that time?

166 A. Fourteen. Several had come on from Mastford.

E. L. STILLSON.

THOMAS J. FISHER sworn, and examined by Mr. MATTINGLY.

Q. State your residence and occupation.

A. Residence, Washington, and occupation, real-estate broker.

Q. Does your business include the renting of houses, furnished and unfurnished, in this city?

A. Yes, sir.

Q. How long have you been engaged in that business?

A. From 1851 to 1865, and from 1878 to the present time.

Q. Are you familiar with the late residence of ex-Gov. Shepherd, at the corner of Connecticut Ave. and K St., and the furniture therein?

A. I am, somewhat. I have been through it several times.

Q. That house and furniture is rented to the Chinese embassy, as monthly tenant, for $500 per month. Please state how much of that monthly rental would, in your opinion, be a fair and
167 just allowance for the rent of the furniture.

A. There is no particular rule on the subject. Practice has been to rent the house furnished for double what it would rent for unfurnished.

Q. Would it be practicable to rent that house unfurnished?

A. I think it would be a difficult matter to rent it unfurnished. It is a large house.

Q. Give us generally an idea of the character of the furniture.

A. It is a very elegantly furnished house. It is the best furnished house in Washington—that is, if it contains all the furniture that it did when Governor Shepherd lived there.

Cross-examination:

Q. When were you last in that house?

A. I think some 6 or 7 months ago—since the Chinese embassy have been there.

Q. Did you go through the house at that time?

A. Yes, sir.

Q. Is not that furniture more perishable than furniture usually is, especially because of the fact of most of the upholstering is of a very light color?

168 A. I think the furniture was covered, although I have no recollection of the covering of it. Of course, furniture covered with light silk soils more readily than furniture covered with dark.

Q. So you are unable to testify as to the condition of the furniture when you saw it because of the fact it was covered with linen covers?

A. My answer was more particularly directed to the parlor furniture and the drawing-room. I did not go there to examine the furniture. I only have a distinct recollection that it was covered.

Q. Are not the carpets much worn?

A. On the stairs and landing I think they were considerably worn; in other parts of the house I think they were very good.

Q. What rent could be derived from that furniture if it were taken from this particular property?

A. That would be a hard question for me to answer, as it requires a combination of the house and furniture to get the price.

Q. Could the furniture alone be rented at all?

A. I presume it might, although I have no experience in renting furniture without a house.

169 Q. Is this Shepherd house furnished in a style which would please most applicants for first-class property?

A. Yes; I think it is.

Q. Is not the furniture somewhat gaudy?

A. I don't think it is more so than an elegantly furnished house would be.

Q. Do you know any house in Washington that is furnished in any similar style?

A. I don't call to mind any particular house that is furnished exactly in that style.

Q. Was not the property for a long time idle, unoccupied?

A. I have not personal knowledge of that.

Q. How many houses have you under rent where the rent is double by reason of the house being furnished?

A. I cannot say how many. I can only say, generally, that that is the rule.

Q. Is the proportionate rent of the furniture as low as 25 per cent.?

A. That depends upon circumstances.

Q. What circumstances?

A. The proportion for an indifferently furnished house is, of course, less than it would be for a well-furnished house.

Q. I have reference to a well-furnished house.

170 A. I don't know of any such case in my experience. I can explain, perhaps, by saying that a house that would rent for $75, unfurnished, would rent, perhaps, for $125 furnished. That is somewhat less than one-half. Then we have others, again, where the rental value of the house would be $75, and we would get $150 for the house furnished.

THOM. J. FISHER.

Adjourned subject to notice.

FRIDAY, *April* 14, 1882.

Hearing pursuant to adjournment.

Present: Mr. Mattingly, Mr. Bradley, Mr. Johnston.

B. LEWIS BLACKFORD sworn.

Examined by Mr. MATTINGLY:

Q. State your residence and occupation.

A. I am insurance agent, and a resident of Washington.

Q. How long have you been engaged in that business?

A. More than 14 years.

Q. Are you familiar with the late residence of Gov. Shepherd, of Connecticut avenue and K St., and the furniture in that house?

A. Yes.

171 Q. State whether you insured that furniture in companies represented by you. If so, when, to what amount, and whether it is still so insured, and for what amount?

A. When Gov. Shepherd first moved in the house a portion of the insurance on the furniture was placed with another agent, but permission was given for $40,000 insurance on the furniture. Subsequently the whole $40,000 came into my office and was continued in force until two or three years ago, when it was reduced to $20,000, because he found it inconvenient to pay the premium (so he told me), and the $20,000 has been kept up ever since and is still in force, the $20,000 being on the same property that the $40,000 was.

Q. When you first insured the property were bills of the cost of the furniture exhibited to you? And, if so, state the amount.

A. When I first insured the property no bills were shown to me; only his verbal statement.

Q. Did you examine the furniture at that time?

A. Yes, sir; from basement to garret.

Q. The amount of insurance was what proportion of its value?

172 A. Two-thirds. I asked the value of the furniture, and he informed me that the movable furniture cost $58,000.

Mr. Johnston objects to the latter part of the answer as being not responsive to the question, and simply hearsay evidence.

Q. Give us generally an idea of the character of that furniture.

A. It was the most perfect in construction and the finest in material that I have ever seen anywhere.

Q. When did you last see that furniture?

A. I inspected it thoroughly about two months before the Chinese embassy rented the house.

Q. Have you had any experience or knowledge as to the renting of furnished houses in this city?

A. Yes.

Q. That house and furniture together is rented to the Chinese embassy as monthly tenant for $500 per month. State what, in your opinion, would be a fair and just proportion of that monthly rental for the rent of the furniture.

A. I am perfectly confident that without the furniture no tenant would ever have been found for that house, and that an al-
173 lowance of one-half of the amount for the use of the furniture would be the minimum which, in my judgment, should be allowed.

Cross-examination:

Q. Is not most of that furniture of delicate color and workmanship?

A. No, sir. The only furniture that was liable to be readily soiled was the drawing-room furniture. The furniture in the library, bedrooms, and dining-room was upholstered in dark colors and singularly substantial.

Q. Then you think that this furniture would not be substantially injured by use for five years?

A. I examined the furniture carefully, as I said before, shortly before it was rented to the present tenant—that is, in the fall of 1880. The furniture was then in singularly good order. I did not get any evidence of wear or tear whatever in any part of it. Since then I have not seen it.

Q. What was the condition of the carpets and curtains, specially in the reception-room in the tower?

174 A. I think there might have been some evidence of use in the carpets, but I did not observe any in the curtains.

Q. Is not the house extravagantly furnished?

A. Yes, sir.

Q. Do you think Mr. Shepherd got his money's worth on his purchase of the furniture?

A. That I don't know.

Redirect:

Q. Is that furniture any more extravagant than the house and its trimmings?

A. No, sir; not as much so.

Q. Would not that house, finished as it is, require furniture of the character of this?

A. I think that that house simply furnished could not be rented for any purpose except a boarding-house or hospital or something of that sort, though I suppose that certain extravagances might have been avoided and still make it suitable for private purposes.

B. LEWIS BLACKFORD.

SATURDAY, *April* 15, 1882.

Hearing pursuant to adjournment.

Present: Mr. Mattingly, Mr. Hanna.

HAYWARD M. HUTCHINSON sworn:

Q. How long have you resided in this city?

175 A. I have lived here since December, 1868.

Q. Are you interested in the ownership of real estate here to some extent, and have you had some experience in the renting of furnished houses?

A. I am, and I have.

Q. Do you know the property at the corner of Connecticut Ave. and K St., the late residence of Governor Shepherd, and have you seen the furniture in the house?

A. I do know the property, but I have not seen the furniture for several years; I have not seen it since he left there. I visited the house frequently while he was in it.

Q. That house with the furniture is rented to the Chinese embassy as monthly tenant for $500 per month. What, in your opinion, would be a fair and just proportion of that monthly rental to be allowed for the rent of the furniture?

A. It is a question that I have thought of, and I should think that one-half would be a fair proportion for the furniture.

Cross-examination:

Q. You are not engaged in the business of renting houses?

176 A. That is not my business, it is my misfortune.

Q. Have you any houses that you rent furnished?

A. I have.

Q. Have you any that you receive double the amount of rent for by reason of the furniture in them?

A. I have a piece of property at the corner of K St. and 15th, a house nearly as large as the one in controversy. I consider the circumstances in connection with that very different from this. In the first place, my house is not elaborately furnished as that; in the second place, I had occupied it nearly six years, and I have rented the house because I am tired of keeping house alone. I have not any piece of property that I receive double the amount of rent by reason of the furniture in them. I have a house on Massachusetts Ave. and I have similar houses which I rent, one for $1,000 and another for $1,200 a year. I agreed to put in $3,000 worth of furniture on a lease of 5 years, to be rented for $1,500 a year. I asked $14,000 for the house, and I agreed to put in $3,000 worth of furniture—that is, on a lease of 5 years—making an increase of $25 per month for the furniture.

177 Q. When was the last time you saw the furniture in Governor Shepherd's house?

A. Not since he left it, but very shortly before he left it.

Q. When?

A. I don't remember the date. I have not seen the house since

Gov. Shepherd left it, and my impression is that was about two years ago.

Q. You refer to your house on 15th and K Sts. What proportion of rent — you received therefrom by reason of the furniture in it?

A. That I could not tell. I never tried to divide it.

Q. I understood you to refer to this house and the rent that you received from it as a comparison to your expression of opinion as to the proportion of the rent which should be allowed to the furniture in Mr. Shepherd's house.

A. I did not so understand the question or the answer, or give the answer as any comparison, because I did not consider it was a comparison.

Q. What is the size of your house at the corner of 15th St. and K St.?

A. I think it is 48 or 50 feet front.

Q. Containing how many rooms?

A. I should think that altogether—bath rooms, &c.—20 rooms. There are fully that and may be more.

178 Q. Is that house now under rent?

A. Yes.

Q. Is it well furnished?

A. The furniture has been 11 years in use, but it was very good originally.

Q. Was it elaborately furnished in the first instance?

A. It was furnished for my own use and very well furnished.

Q. What rent do you receive for that house and the furniture therein per annum?

A. $3,600.

Q. How much of that $3,600, in your opinion, if not based upon the facts of the case with respect to any contract of lease, is payable by reason of the furniture in the house?

A. I could not answer such a question. I might be willing to call it all for the furniture or all for the house.

Q. What would you be willing to rent that house for unfurnished?

A. I should not be willing to rent it at all.

Q. What would, in your opinion, be a fair rental for it without the furniture?

A. A fair rent for that house without the side lot would be ten per cent. of the investment; about $5,000.

Q. Without the furniture?

179 A. Yes; I mean without the furniture, but I would not expect to get that for it.

Q. What would you expect to get for it?

A. All I could; I have no expectations; I could not even guess at it.

Q. Then how is it you can guess at the rental value of the Shepherd house?

A. I have just said that I declined to put new furniture in the house on a three years' rental, and I don't see but what I answered the question as well as I could answer it.

Q. What are the circumstances which makes you fix the relative

rental value of the furniture in Gov. Shepherd's house at so high an estimate as one-half of the total rent received for the house and furniture?

A. I will say because his furniture was comparatively new, and, as I have said, very nearly as costly as the house, and that the house is rented by the month instead of by a term of years, and a furnished house that has been occupied three months or a year the furniture gets old faster than the house.

Q. Your estimate of the rental value of the furniture in the Shepherd house is based, then, upon its value as new furniture?

A. Yes; as comparatively new.

180 Q. Are you not aware that that furniture has been in that house and in use almost all the time since the time the house was built?

A. I was asked to state my opinion of the value of the furniture when Mr. Shepherd left. I have never been in the house since and know nothing about the furniture. Then I say it was comparatively new.

H. M. HUTCHINSON.

Adjourned to Tuesday, April 18, at 2 o'clock.

TUESDAY, *April* 18, 1882.

Hearing pursuant to adjournment.

Present: Mr. Johnston, Mr. Mattingly, Mr. Bradley.

On account of the absence of the witness, the hearing is adjourned to Wednesday, April 19, at 3 o'clock p. m.

WEDNESDAY, *April* 19, 1882.

Hearing pursuant to adjournment.

Present: Mr. Bradley, Mr. Hanna, Mr. Johnston.

CHARLES C. DUNCANSON sworn.

Examined by Mr. BRADLEY:

181 Q. Please state your residence and occupation.

A. Residence, Washington, D. C.; occupation, auctioneer.

Q. Are you familiar with the renting of houses, furnished and unfurnished, in your business?

A. I only have a general knowledge of it.

Q. Do you know the property known as 1705 K St. N. W. in this city, the late residence of Governor Shepherd?

A. Yes, sir.

Q. Have you seen the furniture in that house, and do you know its character? If so, state its general character.

A. I have seen the furniture, having been through the premises. I think it one of the finest furnished houses in Washington.

Q. Your business involves the sale of furniture, does it not?

A. Yes.

Q. How long have you been in that business?

A. For myself since 1873, and acting for others since about 1862.

Q. The property referred to, both houses and furniture, is rented to the Chinese embassy as monthly tenant at $500 per month. What, in your judgment, would be a fair and just proportion of that rent for the furniture?

182 A. I think one-half.

Q. Upon what is your judgment based?

A. From what the house would rent for without the furniture.

Q. Do you think that that house would rent readily at all unfurnished?

A. It might at certain seasons of the year; but there is certain furniture in there which, if moved out, would have to be replaced previous to rental or its place filled by something else.

Cross-examination:

Q. What would that furniture rent for out of the house?

A. Placed in another house of the same kind the rent would be worth about one-half of what you got for the house and furniture. I have never heard of furniture being moved from one house to another and being rented seperate.

Q. Do I understand you to say, then, that the proportion of rent derived from the furniture in houses furnished in this city which are rented is the same as received for the same houses unfurnished?

183 A. No.

Q. What is the usual rate of increase in rent by reason of the furniture?

A. It depends entirely upon the manner in which the premises are furnished.

Q. I wish to refer to houses furnished in the best manner, and also to first-class houses.

A. I think the usual custom is taking the value of the two together and proportioning it. The furniture is subject to more wear and tear than the house, and if any preference is shown in the proportions of the rent it is usually given to the furniture proportion.

Q. What house in this city, furnished, do you know of, as yielding double rent by reason of the furniture?

A. I know of none at the present time that I can call. I am not in the business in renting. My knowledge of such is general and based upon information from others. I have sold several houses, or the furniture contained in several houses, which were rented in that manner.

Q. In what manner?

A. House and furniture together rented.

Q. In what proportion of rent for the furniture?

184 A. Some have been in the proportion of one-half, some have been in two-fifths, some have been in one-third. I find that in finely-furnished houses the proportion is greater.

Q. Please name to me a house in which you have so sold out the furniture where the rent received therefore has been as much as one-one-half of the entire rent for the premises.

A. There is a house No. 1833 G street—I think that is the number—which was occupied by one of the ministers. I was informed at the time of the renting with the furniture, and was informed afterwards, what it would rent for without. My recollection in that case is that the rental of each was about equal.

Q. When was this and what was the total rental?

A. This was several years ago. If my memory serves me correctly, it was about $200 per month for house and furniture.

Q. Can you name any other?

A. The house that Senator Dorsey occupied. The furniture there was in about the same proportion. There have been several others.

Q. How do you know as to the fact of these proportions?

A. From information.

185 Q. Your knowledge in regard to renting property, furnished and unfurnished, is based upon information and not in the line of your experience?

A. It is based upon information which has been given to me in my business, and is not based on actual rentals by me, except in one instance, where the property belonged to me and the furniture contained therein.

Q. What rent, in your opinion, could the owner of the furniture in the Shepherd house get for it if the same person did not also own the Shepherd house, or one similarly large and expensive in which to put the furniture for rent?

A. If I understand the question, it would be necessary to divide the furniture, as it would take a house as large as the Shepherd house to be furnished by it, and if divided it naturally would not rent for as much, as a majority of the furniture is for suites of rooms.

Q. What could you realize per annum from that furniture under the condition mentioned in the last question?

A. It would depend entirely upon what portion went in

186 one house and what went in the other. Your question is probably not as you want me to understand it.

Q. My question is very simple and I will repeat it. How much could you realize per annum from that furniture, using it entirely at your own discretion and for your own best interests, under the conditions mentioned in the two preceding questions?

A. I probably could realize by placing it in houses not so large as the Shepherd house in equal proportions—that is, increase the rental probably of the house one-third or two-fifths—but the class of furniture as in that house is more suitable and more rent could be obtained from it by being in a house of equal size as that of Shepherd's, as parties who rent houses of that size and style are better able to pay higher prices.

Q. What is the condition of that furniture?

A. When I last saw it it was in good order. It was just previous to his leaving the house. I saw it when Don Cameron was in there.

Q. What is the present value of that furniture?

A. I cannot say, as it may have been badly used since I saw it;

but at the time mentioned, about two years ago, I had
187 occasion—I thought at the time I saw it the furniture which could be taken out of the house without marring the beauty of the interior would bring in the neighborhood of $20,000.

There is considerable of it that whoever gets the house ought to purchase, which is not included in the estimate which I have just given. There is a lot of book-cases and hat-racks in the halls, and mirrors, secretaries, and some very handsome chandeliers.

Q. What is the value of all the furniture which could be removed from the house without injuring the walls or the freehold?

A. I think my former answer of $20,000 is what I appraised it at at that time. The value of the things which I have excepted if left in there I think would be worth $20,000 or $30,000 in addition. In other words, I mean that it would cost fully that amount to replace them. If taken out and could not be put into a place as near like the Shepherd mansion, they probably would not bring one-half that amount, maybe less.

Q. Please mention the articles estimated by you at from
188 $25,000 to $30,000 and which you say should remain in the house?

A. I cannot specifically state each and every article, but I refer to the secretaries, book-cases, hat frames and racks, étagères, chandeliers, and mirrors.

Q. What is the estimated annual depreciation in the value of furniture when used in a rented house or when rented with a house?

A. That depends entirely upon how it is used, as some persons are better keepers than others; ordinary wear and tear upon furniture, I suppose, would be about 6 per cent.

Q. Are foreign ministers good tenants, as far as the use of furniture is concerned?

A. They are like other people. There are careful and careless ones.

CHAS. C. DUNCANSON.

It is agreed between the counsel on both sides that the house and furniture in question is rented to the Chinese embassy as monthly tenant for $500 per month.

Counsel for Mr. Shepherd announce their testimony closed.

Adjourned to Friday, April 21, at 11½ a. m.

189 FRIDAY, *April* 21, 1882.

Hearing pursuant to adjournment.

Adjourned to Tuesday, May 9, at 12.00 o'clock m.

TUESDAY, *May* 9, 1882.

Hearing pursuant to adjournment.

Adjourned subject to notice.

WEDNESDAY, *May* 17, 1882.

Hearing pursuant to notice.

Present: Mr. Mattingly, Mr. Hanna, Mr. Johnston.

Adjourned to Saturday, May 20, at 12 o'clock m.

SATURDAY, *May* 20, 1882.

Hearing pursuant to adjournment.

Present: Mr. Hanna, Mr. Mattingly, Mr. Bradley, Mr. Johnston.

THOMAS E. WAGGAMAN sworn, and examined by Mr. HANNA:

Q. State your name, age, and residence.

A. My name is Thomas E. Waggaman; my age is 42 years; my residence is Washington, D. C.; I am a real estate broker.

190 Q. Is part of your business the renting of houses, furnished and unfurnished, in this city?

A. It is.

Q. For what length of time have you been engaged in that business?

A. About 16 years.

Q. Are you familiar with the house formerly occupied by Mr. Shepherd, at the northeast corner of Connecticut avenue and K streets northeast?

A. I am.

Q. Have you been in that house?

A. I have been through the house with the exception of three or four rooms, where the Chinese minister's wife lives. I could not go in these.

Q. When did you see it last?

A. About one month ago; maybe not so long.

Q. Did you examine the property with a view of seeing how it was furnished?

A. I did.

Q. That property, both house and furniture, is rented to the Chinese embassy at $500 per month as monthly tenants. Please state, in your opinion, what would be the fair and just proportion of that rent between the house and furniture.

191 A. I should say the furniture would be worth about one-third of the rent.

Cross-examination by Mr. MATTINGLY:

Q. Upon what is your opinion based?

A. Upon furnished houses that I have rented.

Q. Have you ever rented a furnished house where the house and furniture corresponded in value to that?

A. I have not.

Q. Do you mean to say that your own personal experience in renting furnished houses is that the house rents furnished for 50 per cent. more than unfurnished?

A. I do not. I think they rent 33⅓ per cent. more after the house rent had gotten up to $125 per month. I have made a careful examination of my books, and I find out that houses up to $100 per month the rent is divided—that is, the rent of the house and furniture is divided equally—and that over that amount one-third went to the furniture and two-thirds to the house.

Q. What is the largest rental for any furnished house you now have charge of?

A. The largest rent I had from this calculation was the rent of the house occupied by Zamacona, No. 1418 K street, which
192 was $250 per month. The furniture belonged to Mr. Moses and the house belonged to Mr. Jessup. Mr. Moses valued his furniture at $8,000. I collected the rent together and sent Mr. Moses $83.33 per month and Mr. Jessup $166.66.

Q. What is the real estate worth?

A. Mr. Jessup asked $33,000 for the house and lot, but it was not worth that much money. I think it was worth between $20,000 and $22,000.

Q. What do you rent the other houses for without the furniture?

A. I rent the other ones—one for $150 now and $125 for another. One of them is vacant. Mr. Zamacona has gone away and Mr. Romero is there. The house I referred to at $150 is vacant, but I ask that for it.

Q. In the furnished houses that you have under rent what is the relative proportion between the value of the furniture and the real estate—house and lot?

A. That is a pretty difficult question to answer. In the case above spoken of my value of the house was $20,000; now, in point of fact, I knew nothing of the value of the furniture except what Mr. Moses said, except that it was worth $8,000. I cannot answer the question intelligently.

193 Q. In the furnished houses you have for rent, what is the proportion of them which rent for above $125 per month?

A. I suppose one-half.

Q. In any of them is the furniture worth as much as the real estate?

A. It is not.

Q. Is it worth two-thirds as much?

A. That I don't know.

Q. In your opinion, would it be practicable to rent the Shepherd house unfurnished?

Counsel for plaintiff object to the question.

Objection overruled.

A. I think it would be very difficult to rent it.

Q. Give your reason for that.

A. The house is a very large one, and the rooms are very large and only suited to a private family, and there are very few private families who want such a house as that.

Q. You advertise No. 334 C St. N. W. for rent for $175 per month. What would that house rent for unfurnished?

A. I have had the house for three years and never been able to put a tenant in it furnished. I have had it off and on for three years for rent for Mr. Franklin, and I have never rented it.
194 It won't rent furnished for that rent. I cannot say what it would rent for unfurnished. I have not looked at the house and don't know.

Redirect by Mr. HANNA:

Q. What is the value of the furniture in the Shepherd house, based upon your recent examination thereof?

Counsel for defendant object to the question.

Objection overruled.

A. I examined this house with Mr. Latimer, and told him at the time that I knew nothing of the valuation of the furniture. I would not be able to decide the question of value for myself.

Q. In your opinion, would it be practicable to rent the furniture of the Shepherd house apart from the house?

A. I never had but one of those cases. I got $15 per month for some furniture after advertising in the Star. That is as far as my experience goes.

T. E. WAGGAMAN.

Adjourned to Tuesday, May 23, at 12 o'clock m.

195 TUESDAY, *May* 23, 1882.

Hearing pursuant to adjournment.

Present: Mr. Mattingly, Mr. Hanna, Mr. Bradley, Mr. Johnston.

MARCUS B. LATIMER sworn, and examined by Mr. HANNA:

Q. State your residence, occupation, and age.

A. I am a resident of Washington; my business is that of auctioneer, and my age is 43 years.

Q. Have you had knowledge in your business of the renting of houses, furnished and unfurnished, in this city?

A. Not to any extent, sir.

Q. Have you had knowledge as to the rental value of furniture?

A. My knowledge as to values, both in regard to personal and realty, is considered good.

Q. How long have you been engaged in that business in this city?

A. About 18 years.

Q. What experience have you had? State the general character of it in respect to the appraisement of the valuation of furniture and household effects.

A. That is one of the most important parts of the business with which I am connected. I have been frequently called on in regard to such matters as an expert.

196 Q. Have you had any evidence of the appreciation of your services as such an expert outside of the District of Columbia as well as in it?

A. I have, as well as in Washington city, been called to Albany to value the entire contents of the Delavan House, containing 300 rooms.

Q. State whether you are acquainted with the residence formerly occupied by Mr. Shepherd, at the northeast corner of K St. and Connecticut avenue, in this city, and with the furniture therein.

A. Thoroughly.

Q. State when you last saw the same.

A. It has been about one month ago.

Q. State what was the character of the examination you then made of it.

A. The examination was made from the basement to the top of the house, and I considered it thorough.

Q. State what, in your opinion, is the value of the furniture and household effects, including all the moveable property in said house.

A. I think the furniture and all movable articles is worth at least $15,000.

Q. What is it worth at most?

197 A. To a party taking the house as it now stands I should consider it worth—well, $2,000 more as it stands in the house.

Q. That property, both house and furniture, is now rented to the Chinese embassy at $500 per month as monthly tenants. State what, in your opinion, would be a fair and just proportion of that rent for the furniture.

Objected to, as the witness has stated that he had no experience in that business.

Objection overruled.

A. I should think certainly one-fourth, and not over one-third.

Cross-examination by Mr. MATTINGLY:

Q. Have you ever been in the business of renting furnished houses?

A. Yes, sir; I have to a certain extent.

Q. Explain what you mean by that.

A. Well, sufficiently to know the comparative values of each.

Q. Are you engaged in that business now?

A. Not directly, sir.

Q. Are you indirectly?

A. Our business is of a character that takes in anything of the kind.

Q. You are in business with Thomas Dowling, the auctioneer, are you not?

198 A. I am, sir.

Q. Has he at this time furnished houses rented under his charge?

A. I think he has, sir, in Georgetown. I do not know positively.

Q. I want to know what experience you have had as to renting furnished houses in this city?

A. My experience in that business has not been to a very great extent.

Q. Do you mean by that that you have had very little experience in that?

A. Being a branch of our business, the knowledge in the matter is all that is required so as to decide upon values.

Q. Can you designate any furnished houses rented that you have had charge of?

A. Not now, I cannot. I will state this much, that before Mr. Dowling succeeded Latimer and Cleary we had a number of instances of the kind of which, at the present time, I know nothing about. That has been about 9 years ago.

Q. How long were you engaged in the examination of this furniture in the Shepherd house?

A. I suppose it took an hour and a half; but that was not
199 the only time that I had ever seen it. I had been in the house frequently when occupied by Governor Alexander R. Shepherd.

Q. Had you been through the house when he lived in it?

A. I had been in a number of rooms. I had been in the parlors and several of the bed-chambers.

Q. Did you make any schedule or inventory of the furniture?

A. To a certain extent I did; sufficient to give me an idea of what it was worth.

Q. To what extent?

A. Well, figuring the result of separate rooms—parlors, dining-room, and the general character of the furniture there, of which I was quite familiar.

Q. If I understand you correctly, as you went through each room you made up your mind what the furniture in that particular room was worth, and did not schedule and appraise each article of furniture in it. Is that the way you did it?

A. I value each article in columns, adding it up, and so on throughout the entire property. Say, for instance, I went into the parlor. I would begin with the carpet or the piano, placing, as I thought, its probable value.

200 Q. Have you got the schedule that you made out?

A. I have not.

Q. What has become of it?

A. I don't know. It was merely slips of paper. After getting my ideas of the value of the furniture from it it was no use, which is frequently the case, as I did in appraising certain furniture a few days ago for Thomas J. Fisher. I merely wanted to know the result, and the paper was thrown away. He did not take a copy.

Q. Was your valuation based upon what the property would bring at auction?

A. It was; but if the property was taken with the furniture as it stood, I consider it worth $2,000 more.

Q. What is the general character of that furniture as to its quality?

A. It is good throughout, made by one of the best manufacturers in the country.

MARCUS B. LATIMER.

Adjourned to Thursday, May 25, at 2 o'clock p. m.

201 THURSDAY, *May* 25, 1882.

Hearing pursuant to adjournment.

Present: Mr. Hanna, Mr. Johnston, Mr. Bradley, Mr. Mattingly.

WILLIAM F. HELLEN sworn, and examined by Mr. HANNA:

Q. State your residence and occupation.

A. My residence is Washington, D. C.; my occupation, real estate broker and agent.

Q. Have you had experience in the line of your business in the renting of houses furnished and unfurnished?

A. I have.

Q. For how long a time have you been engaged in that business?

A. Since 1877.

Q. You may state whether you are familiar with the custom or uses that prevail in this city as to the proportion of increase of rent for a house furnished.

A. From one-fourth to one-third; a house that rents for $200 unfurnished would rent for about $300 furnished.

Cross-examination by Mr. MATTINGLY:

Q. It depends a great deal upon the character and value of the furniture, does it not?

202 A. Yes, sir.

Q. Have you any furnished houses now under your charge which you rent?

A. I have not.

Q. How long since you have had?

A. About six months ago.

Q. Have you had very much experience in that particular line of your business?

A. I have not had as much, perhaps, as Waggaman or Warner, but I have had a good deal of it.

Q. What is the highest rent you have received for a furnished house?

A. $300.

Q. Where was that one located?

A. I could not recollect now without looking at my books.

Q. Then you are unable to state the relative proportion in value between furniture and real estate?

A. My experience has been from about one-half to one-third more when furnished. I cannot say as to what particular house.

Q. About how many furnished houses have you had for rent in your charge?

A. I could not say that.

Q. Do you know or can you state, about, in general terms, the relative proportiom in value between the real estate and the furniture in this case?

203 A. It depends entirely, as you remarked, upon the class of the furniture.

Redirect:

Q. Do you know of any other houses furnished and the rent derived therefrom and the proportion charged to the furniture?

A. I have one belonging to Judge Bartley, on 17th St. The proportion for the furniture was about one-third of the whole. I have — on L St., near All Souls' Church, in which the proportion is about the same. I have one on 13th St. If I had my book here I could refresh my memory.

Adjourned to Saturday, May 27, at 11 o'clock a. m.

SATURDAY, *May* 27, 1882.

Hearing pursuant to adjournment.

Present: Mr. Johnston, Mr. Hanna, Mr. Mattingly, Mr. Bradley.

ROBERT C. FOX sworn, and examined by Mr. JOHNSTON:

Q. Please state your name, residence, and occupation.

A. Robert C. Fox; Washington, D. C.; real estate broker;
204 I am a member of the firm of Fitch, Fox and Brown, real estate brokers.

Q. Is part of your business the renting of furnished and unfurnished houses?

A. It is.

Q. What, in your opinion and from your experience, is the usual addition to the rental value of a house by the addition of furniture?

A. In my judgment, it is difficult to establish an average price or value between the rent of furnished and unfurnished houses, but I have in my mind three or four properties which can be taken as a fair average, in which the difference between the price asked for the house unfurnished and that furnished is from one-fourth to one-third, from 25 to 33 per cent.; but I consider 33 per cent. about the fair average.

Q. Are you familiar with the property formerly occupied by Governor Shepherd, on K St. and Connecticut Ave.?

A. I am.

Q. Have you been in the house?

A. I have been in it repeatedly, and have been through it on several occasions with the owner, with reference to the renting of the house and the sale of the property.

Q. That property, both house and furniture, is rented to
205 the Chinese embassy at $500 per month as a monthly tenant. Please state what, in your opinion, would be a fair and just proportion of the rent to be allowed for the use of the furniture?

A. I think that $2,000 per year would be a fair price for the use of the furniture in that house, and that $1,800 would be the lowest sum that I would think should be paid for the use of it.

Cross-examination by Mr. BRADLEY:

Q. There is no invariable rule which covers the proportion between house and furniture, is there?

A. No, sir; there is not any invariable rule, as we all understand that some people furnish their houses differently.

Q. It varies, then, according to the character, value, and quality of the furniture?

A. And location of the house also.

Q. Is not the proportion of rent for the furniture in an expensively furnished house greater than in one not expensively furnished?

A. No. I have given there just what I consider about the average between furnished and unfurnished houses, take it as it runs.

Q. Then the proportion for the rent of the furniture of an expensively furnished house is not greater than that of an inex-
206 pensively furnished house; it varies according to other circumstances?

A. Well, I have given to the best of my knowledge about all I can say with regard to the difference between a furnished and unfurnished house, and the average.

Q. You base your opinion, then, upon the three or four houses that you have in your mind, as to the proper proportion to be fixed?

A. Not from the three or four houses, but I singled out the three or four houses among the houses that we rent as a fair specimen, and carry them in my mind as a fair average.

Q. Does your business embrace the renting of furnished houses to any extent?

A. Yes, sir; and has for possibly 8 years.

Q. Have you never known the rent of a house to be double by reason of its being furnished?

A. I don't recollect such an instance.

Q. Do you recollect an instance in which you asked or demanded the rent of a house which was furnished, which unfurnished would not rent for more than half the sum demanded?

A. No, sir; I don't remember any case. I can say that we frequently have houses put in our hands for which no price is charged for the furniture for summer occupation, but these I regard as peculiar circumstances and having no bearing upon this case.

207 Q. Do you remember having the house of ex-Attorney General Williams for rent at the time you had this house occupied by the Chinese embassy?

A. I do.

Q. What did you want for that?

A. As well as I remember, $6,000 per year.

Q. Do you know the character of the furniture in that house?

A. Yes, sir.

Q. It does not compare with the character of the furniture in the Shepherd house, does it?

A. According to Mrs. Williams, that furniture was very expensive.

Q. Did not you see it and judge for yourself?

A. I do remember the price of a few things. For instance, the ottomans were expensive, and from what she said the furniture must be as expensive as any furniture.

Q. Was it furnished anything like as expensively or handsomely as the Shepherd house, in your own judgment?

A. I should say the furniture in Governor Shepherd's house was admirably adapted to that style of house.

Q. "That does not answer my question."

A. I have answered it as well as I can. Please repeat the question.

Q. ("Question repeated.")

208 —. That I am unable to say positively, believing that possibly the furniture in the Shepherd house cost more than that in the Williams house.

Q. Were not the carpets throughout the Williams house Brussels carpets and all pretty well worn at that time?

A. The representation made to me by Mrs. Williams——

Q. I don't ask for that, I ask for your own knowledge.

A. The carpets in the Williams house are what I call expensive Brussels carpets, but of course had been more worn than those in the Shepherd house.

Q. Do you know any house in the city of Washington that is furnished as handsomely or expensively as the Shepherd house?

A. I should say that I have in my mind private houses that, as far as the furniture goes, it is as costly in proportion as that in the Shepherd house.

Q. Will you name one?

A. One is Judge Coffee's house, on H St.

Q. What would the Williams house rent for unfurnished—what would be fair rent?

A. I should think that house ought to bring $3,000 a year unfurnished, possibly more for a legation.

209 Q. Do you know whether it has been rented unfurnished?

A. Never to my knowledge.

Redirect by Mr. HANNA:

Q. Is not the furniture in the Shepherd house of a gaudy and rather flashy character?

A. No, sir. That is a question of taste upon which gentlemen would differ. I never saw anything in the Shepherd house but what I thought was elegant.

Q. Will you state the size of the Williams house—the frontage?

A. I think it covers about 60 feet front.

Q. About the size of the lot?

A. The Judge owns about 100 feet or thereabouts on Rhode Island avenue, and the vacant ground is about 40 feet front.

Q. Is there a stable there?

A. There is a very fine stable.

Q. Has the property been rented?

A. It is now occupied by Mr. Washburn, a member of Congress.

Q. At what rent?

A. I don't know. That is an arrangement made between the ex-Attorney General and Mr. Washburn himself, as far as I know.

210 WILLIAM H. CLAGGETT sworn, and examined by Mr. HANNA:

Q. State your residence and occupation.

A. Washington, D. C.; real estate broker.

Q. State how long you have been engaged in that business.

A. About 16 years.

Q. State whether part of your business is the renting of houses furnished and unfurnished.

A. I don't think I ever have rented a house furnished.

Q. State whether you have knowledge coming to you in the line of your business as to the renting of furnished, as well as unfurnished houses.

A. None, except that I have noticed prominent houses that have been offered unfurnished and have been furnished by parties who have rented them unfurnished, and then afterwards desired to re-rent them furnished.

Q. State what is the custom that prevails as to the increase which a house furnished would produce in rent above the same house unfurnished.

Objected to by counsel for defendant because no foundation has been laid for the question.

Objection sustained.

Q. State whether you have knowledge of any custom existing in the District of Columbia as to the ratio of rent between houses

211 furnished and unfurnished.

A. I have not.

Q. Do you know the property formerly occupied by Governor Shepherd at the corner of Connecticut avenue and K St. N. W.?

A. I know its looks and general character.

Q. Have you been in the house?

A. I have never been through the house. I was in the billiard-room and picture gallery whilst Governor Shepherd lived there. All else that I have seen of the house would be in walking from the door to the library, the parlors being in view and the room on the right.

Q. Have you any knowledge of the rent derived from furnished houses in this District, and do you know of any case, any instance?

A. The business of renting furnished houses has not been a specialty of mine. I never gave any attention whatever to it. The knowledge that I have is from observation of the difference between the rent of a vacant house and an ordinary furnished house. That would range about 25 per cent. or one-fourth difference between the house furnished and unfurnished. I have never had any experience in houses of the kind mentioned here.

Mr. Mattingly objects to the answer.

212 Cross-examination by Mr. MATTINGLY:

Q. Do you mean to say that a house which rents unfurnished for $100 would, fully furnished, rent for only $125?

A. Such houses as come under my observation.

Q. Can you mention a single house of that kind?

A. Well, I have never had occasion to tax my memory specially with the matter. I have never had one myself. I have never rented a furnished house.

Q. You don't know much about it, then?

A. I have said that I never made it my specialty.

Q. And have had no personal experience in the matter at all?

A. None whatever, except my observation of cases. Occasionally parties have rented houses of me unfurnished, and then have undertaken to rent the whole thing furnished. The difference would be about 25 per cent.

Q. That is from what you have heard from them?

A. That is what they asked. I have one such case on hand at present; that is a house in the very same square as Governor Shepherd's. The party rents from me for $40 per month, and, furnished, offers it for $50 per month.

Q. What is the furniture in that house worth?

213 A. I don't know; I never had occasion to examine it.

JAMES C. SPRIGGS sworn, and examined by Mr. JOHNSTON:

Q. Please state your name, residence, and occupation.

A. My occupation now is that of agent for the renting of buildings. I am a civil engineer by profession.

Q. I believe you are agent for the estate of John O. Evans, are you not?

A. Yes, sir; I am.

Q. From your observation and experience what addition is made to the rental value of a house by the addition of furniture?

A. It depends upon the style of furniture, but the average is about 33 per cent. It also depends upon the quantity of furniture.

Q. Have you rented frequently furnished houses?

A. Oh, yes.

Q. Have you ever known an instance in which the rental value of property was increased 100 per cent. by the addition of furniture?

A. No, sir.

Cross-examination by Mr. MATTINGLY:

Q. How many houses have you under your charge which are furnished and under rent?

A. I have four.

214 Q. You have stated that the increased rent by the reason of the furniture would depend upon the quantity and character of the furniture?

A. Yes, sir; altogether.

Q. In renting a furnished house what percentage of its value ought the furniture to yield?

A. I don't know that I ever made an estimate of that. I don't know that I could answer that question exactly. I never made a calculation as to the value of the furniture. I usually estimate the style of furniture, and, without putting any value upon it, exercise my own judgment as to what it should bring.

Q. These houses that you have under charge, what is the relative proportion in value between real estate and furniture?

Mr. Johnston objects to the question.

Objection overruled.

A. These houses that I have in charge, I could not tell as to the value of the furniture because I have not estimated the value of the furniture & one of them I could only tell by hearsay; by what the owner valued the furniture at.

Q. These four houses that you speak of, as I understand
215 you, in your opinion rent for about one-third more than they otherwise would by reason of there being furnished?

A. Yes; about that. The rent of the furniture is about 33 per cent. of the rent of the house furnished.

Q. How long have these houses been rented furnished?

A. One of them has been rented for 2½ years, about, and one for not quite one year—about six months probably—and then one for about 4 years, four or five years, six years, and the other one for about 6 months.

Q. Where are they located?

A. One is 1710 F St. N. W., one 1415 K St. N. W., one 1025 Vermont Ave. N. W., and the other 1402 L St. N. W.

Q. With the exception of the K-St. house, the balance were furnished with the express purpose of renting them furnished, were they not?

A. Neither the L-St. house nor the Vermont-Ave. house are well furnished on the 3rd floor. The other houses are pretty well furnished—nothing but standing furniture. The F-St. house is furnished with table-ware and everything. With the exception of the K-St. house and 1710 F St. N. W., these houses were furnished
216 with the express purpose of renting them furnished.

JOSEPH C. G. KENNEDY sworn, and examined by Mr. JOHNSTON:

Q. Please state your name, residence, and occupation.

A. Joseph C. G. Kennedy; office, No. 720 15th St. N. W., Washington, D. C.; attorney for national banks and real-estate broker.

Q. Is part of your business the renting of handsomely furnished houses in this city?

A. Yes, sir. I have rented some of the best-furnished houses in town for a long series of years. I rented Mrs. Laughton's house on H St., occupied by General Schurz for 4 years, one of the best-furnished houses in this city, take it altogether.

Q. Are you familiar with the property of Governor Shepherd on the corner of Connecticut avenue and K St. N. W.?

A. I have known it for a great many years. I was in it on Sunday.

Q. Have you been in it frequently for a good many years?

A. I have been there a dozen times in the last 6 months.

Q. Are you familiar with the character of the furniture?
217 A. It is showy and, I imagine, rather expensive furniture for renting.

Q. That property, both house and furniture, is rented to the Chinese embassy, as monthly tenants, at $500 per month. State what, in your opinion and from your experience, would be a fair proportion of that sum to be allowed as the rent for the furniture alone.

A. I should say 15 to 20 per cent. of the income should be put to the furniture account.

Q. From your experience do you think that the furniture in Governor Shepherd's house could be rented at all if removed from that property?

A. Not likely, in its entirety. That would be a great improbability in the case of furniture like that, unless a person had a house like that and wanted such furniture to put in it.

Cross-examination by Mr. MATTINGLY:

Q. What would be the probability of renting that house unfurnished?

A. Those are contingencies that nobody can speak of with confidence. I did rent the next house to it, I supposed for 6
218 months, to the Russian legation. I rented it for the summer months at $200 per month, furnished, very handsomely furnished. He has held it two months now, and gives me notice that at the end of this month he is going to give it up and go to Europe. It goes to show the uncertainty of things like that and the insecurity of it.

Q. In your experience in renting houses furnished do the owners or you as the agent of the owners take into consideration the fact that the furniture should properly yield some percentage on its value and, in addition to that, a percentage for its wear and tear?

A. That is always involved—that consideration.

Q. Does the proportion of rental properly applicable to the furniture of a furnished house depend upon the quantity and quality of the furniture?

A. Very much, though my experience teaches me you can establish no rule and you can depend upon no result with any reasonable certainty concerning furnished houses in the city of Washington. I have had 25 years' experience. You cannot establish a rule as you might in New York. It is utterly impossible to determine. Frequently you rent a house and furniture for less than the
219 furniture ought to bring.

Q. Is it the result of your experience in renting furnished houses that the increased rental you receive by reason of there being furniture is about from 15 to 20 per cent. of the gross rental?

A. No; the furniture should rent for from 10 to 15 per cent. of its value. That was my intention and meaning.

Q. That was what you intended to say?

A. That is new furniture I speak of; at its cost. You could not expect that of furniture that has been used.

Q. The same rule would apply, would it not, of its value, not of its cost?

A. Of course. What the furniture would bring to-day at auction, I ought to say from 10 to 15 per cent. of what that furniture was

worth in cash, but I don't mean to say that it would not bring that percentage or it would not bring more.

Q. Did you have charge of this Bruen house prior to renting it to the Russian legation?

A. I had. It has been standing unrented for ten months.

Q. What did it rent for at that time?

A. $4,000 per year.

220 Q. Did it not at any time rent for $600 per month?

A. It may have for a short time.

Q. What part of the Shepherd house have you been in?

A. I have been on two floors, but never down-stairs in the basement. I have been through all the other rooms. I have never been through the house. As I said, I merely judge from what I saw and from the parlor and adjacent rooms and dining-room.

Q. It is very handsomely furnished, is it not?

A. It is a finely furnished house; of a good quality and rather expensive and rather showy.

Q. Is it costly furniture—expensive furniture?

A. Yes; it is expensive furniture; as equally good and equally fashionable and attractive — could be gotten. It was expensive furniture when it was bought, but it is past its style now.

Redirect by Mr. JOHNSTON:

Q. The Shepherd property, both house and furniture, is rented to the Chinese embassy at $500 per month. How many dollars of that sum would be properly credited, in your opinion, to the furniture account?

A. It is a very hard question to answer. I should think I would want $1,500 at least out of the $6,000 for the furniture if I

221 owned it. Of course, furniture should bring in more on its value in proportion than the building, though not so much greater than you would suppose. Of course, you consider your taxes on the building are pretty large, and also the repairs, but the furniture is very perishable.

Recross by Mr. MATTINGLY:

Q. If you owned the furniture in that house the proportionate amount of the $6,000 rental that you would want would depend upon the value of the furniture, would it not?

A. Yes. Taking your view of the value of that furniture and the view you entertain of that house, the furniture should rent for so much. Take the adjoining house which rents for $200 per month; take out what would be a fair value for the rent of the furniture and there would be very little left for the rent of the house; and, *vice versa*, take out the value of the rent for the house and there would be nothing left for the rent of the furniture. The house would be brought into debt to the furniture very considerable.

Counsel for plaintiff announces the proof closed on their side.

Adjourned subject to notice.

TUESDAY, *June* 13, 1882.

Hearing pursuant to notice.

Counsel for the defendant Shepherd announce that they have no further proof to offer, and the cause is submitted to the auditor.

222 *Petition of Complainant as to Amendments to Bill. Filed Jul-* 12, 1882. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
ALEXANDER R. SHEPHERD *et al.* } No. 7803, Equity.

To the supreme court of the District of Columbia:

The petitioner, George S. Pepper, complainant in this cause, respectfully represents—

That the amendments to his original bill of complainant, pursuant to leave of the court first had and obtained, having been prepared by his counsel & transmitted to him to be signed & sworn to by him at his place of residence, Philadelphia, Pennsylvania, the same were then sworn to, but, by inadvertence, the same were not signed by him correctly; that the said amendments were returned to him for his signature and by him signed and mailed at once on receipt thereof, but the same were not received again by his counsel in Washington until after the rule day occurring next after the time of the allowance by the court of said amendment.

The petitioner states that by virtue of the 26th of the equity rules of practice in this court he might be considered to have
223 abandoned the said amendments, inasmuch as the same were not filed in the clerk's office on or before the rule day next succeeding after the passing of the order by this court allowing said amendments to be made. The petitioner says that it is not his intention to abandon the same, but, on the contrary, to make and file the same, which are now in the hands of his counsel ready for filing.

The petitioner therefore renews his motion for leave to amend his original bill in this cause in the particulars set out in the motion filed herein on the 20th day of June, A. D. 1882, & which he refers to & makes part of this petition as if the same were herein again written.

NATHANIEL WILSON &
HANNA & JOHNSTON,
Solicitors for Complainant.

Take notice that on Monday, July 17th, 1882, at the hour of convening the court, or as soon thereafter as counsel may be heard, the complainant, by his counsel, will move the court for leave to file amendments to his original bill in this cause in the particulars set out in the motions filed in this cause on the 20th day of June
224 and on the 12th day of July, A. D. 1882.

N. WILSON & HANNA & JOHNSTON,
Solicitors for Complainant.

To Wm. F. Mattingly, Esq., of counsel for d'f'd't-, Alex. R. Shepherd, Mary G. Shepherd, Wm. F. Mattingly, David L. Bartlett, Cross, Bacon, & Bradley, & Henry W. Garnett, sol. for Mercy M. C. Gray & Trustees Fitch & Davis.

Copy served this p. m. July 12th, 1882.

WM. G. JOHNSON.

Exceptions to Auditor's Report by Complainant. Filed Jul- 17, 1882. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
ALEXANDER R. SHEPHERD *et al.* } 7803, Equity.

The complainant, for exceptions to the report of the auditor filed herein on the 29th day of June, 1882, says:

1. That the auditor erred in not allowing to complainant a larger proportion for the lot and improvements thereon than the saum of $3,000.00 per month from the total monthly rental shown to be received for the lot, improvements, and furniture.

225 2. That the auditor erred in allowing to the defendant Shepherd so large a proportion of said total rental as $200.00 per month for the rent of the furniture in said premises.

3. That not over the proportion of one-fourth of said total rental should have been in any event allowed to the defendant Shepherd for the use of said furniture.

HANNA & JOHNSTON,
Solicitors for Complainant.

Leave to Amend Bill. Filed July 20, 1882. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
ALEXANDER R. SHEPHERD *et al.* } 7803, Equity.

The motion of the complainant for leave to file amendments to the original bill coming on to be heard pursuant to the previous order of the court assigning this day for the hearing thereof, and the same having been duly considered, it is, this 20th day of July, A. D. 1882, ordered that the complainant be, and he is hereby, granted leave to file the amendments to the said bill in the particulars set forth in the motions heretofore filed and without prejudice to the existing injunction and receivership.

A. B. HAGNER,
Asso. Justice.

225*a* Filed July 18, 1882. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
ALEX. R. SHEPHERD *et al.* } In Equity. No. 7803.

To the supreme court of the District of Columbia:

The petition of George S. Pepper, complainant in this cause, respectfully represents that the amendments to his original bill of complaint, pursuant to leave of the court first had and obtained, having been prepared by his counsel and transmitted to him to be signed and sworn to by him at his place of residence, Philadelphia, Pennsylvania, the same were then sworn to, but by inadvertence the same were not signed by him correctly.

That the said amendments were returned to him for his signature and by him signed and mailed at once on receipt thereof, but the same were not received again by his counsel in Washington until after the rule day occurring next after the time of the allowance by the court of said amendments. The petitioner states that by virtue of the 26th of the equity rules of practice in this court he might be considered to have abandoned the said amendments, inasmuch as the same were not filed in the clerk's office on or before the rule day next succeeding after the passing of the order by this court allowing said amendments to be made.

The petitioner says that it is not his intention to abandon
225*b* the same, but, on the contrary, to make and file the same, which are now in the hands of his counsel ready for filing.

The petitioner therefore renews his motion for leave to amend his original bill in this cause in the particular set out in the motion filed herein on the 20th day of June, A. D. 1882, and which he refers to and makes part of this petition as if the same were herein again written.

N. WILSON & HANNA & JOHNSTON,
Counsel for Complainant.

Take notice that on Thursday, July the 20th, A. D. 1882, at the hour of convening the court or as soon thereafter as counsel may be heard, the complainant, by his counsel and pursuant to the order of the court passed July 17th, 1882, will move the court for leave to file amendments to his original bill in this cause in the particulars set out in the motions filed in this cause on the 20th day of June and on the 12th day of July, A. D. 1885.

N. WILSON & HANNA & JOHNSTON,
Counsel for Complainant.

To Wm. F. Mattingly, Esq., of counsel for def'd'ts, Shepherd *et ux.*, Mattingly, Bartlett, Cross, & Bradley, and Henry W. Garnett, & counsel for Mercy Gray and Trustees Fitch and Davis.

Copy served this p. m., July 17th, 1882, to Mattingly.
H. L. REYNOLDS, JR.

Copy served this a. m., July 18th, 1882, to Garnett.

H. L. R.

226 *Amended Bill. Filed July* 21, 1882. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
ALEXANDER R. SHEPHERD *et al.* } No. 7803, Equity.

To the supreme court of the District of Columbia:

The amended bill of complaint of George S. Pepper in the above-entitled cause respectfully represents that, by leave of the court first had and obtained to amend his original bill herein without prejudice to the injunction granted by the order passed herein on December 1, 1881, and without prejudice to the existing receivership, he amends his said original bill as hereinafter stated, to wit:

1. By adding to the first paragraph of the sixteenth section of said original bill the following words, to wit:

"Complainant further says that the said real estate known as lot No. 3, in square No. 164, with the improvements thereon, is a wholly insufficient security for the debt admitted by the defendant, Alexander R. Shepherd, to be due to complainant and charged thereon, and that said lot and improvement- cannot now be sold for a
227 sum sufficient to meet the debt admitted by the said defendant Shepherd to be due to complainant and charged thereon, nor will said lot and improvements yield from rents an adequate income on the value of said lot and improvements, even assuming such value to be equal to the amount of the debt admitted by the said defendant, Alexander R. Shepherd, to be due to complainant and charged on said lot."

2. By adding to said original bill as the nineteenth paragraph the following paragraph, to wit:

Complainant further states that the said Philip died intestat- leaving surviving him a widow and four children, the defendants, John Van Ness Philip, Hermann Hoffman Philip, Gaston Pearson Philip, and Elizabeth Worthington Philip, all of whom are infants under the age of 21 years and aged, respectively, 16 years, 9 years, 8 years, and 6 years.

3. By adding to said original bill as the twentieth paragraph thereof the following paragraph, to wit:

Complainant is willing to surrender, and hereby surrenders, for the purpose of a resale of the said real estate, any title in fee
228 simple which he may have thereto by reason of the deed to him from William H. Philip and James M. Johnston, trustees, recorded in Liber 923, folio 392, of the land records for the District of Columbia; and, for the purpose of reselling the said real estate in this proceeding, complainant waives any interest, claim, or title vested in him by the said deed in fee simple, & complainant hereby

offers to make any conveyance which the court may deem proper or necessary to accomplish the purpose indicated.

4. By inserting after the word "defendants" in the fourth prayer of the said bill of complaint the following names:

Alexander R. Shepherd, Mary G. Shepherd, Mercy Maria Carter Gray, Lewis J. Davis, William F. Mattingly, David L. Bartlett, Samuel Cross, James E. Fitch, Andrew C. Bradley, James M. Johnston, Peter Bacon, George M. Barker, John Van Ness Philip, Hermann Hoffman Philip, Gaston Pearson Philip, and Elizabeth Worthington Philip.

5. By omitting from paragraph No. 62 of said original bill the name of John Alexander, and by inserting in said paragraph the words "is made a party as the representative" in lieu of the words "are made parties as representatives."

229 6. And by adding to the prayers of said original bill the following prayer, to wit:

"That subpœna may issue to the defendants, Alexander R. Shepherd, Mary G. Shepherd, Mercy Maria Carter Gray, Lewis J. Davis, William F. Mattingly, David L. Bartlett, Samuel Cross, James E. Fitch, Andrew C. Bradley, James M. Johnston, Peter Bacon, George M. Barker, John Van Vess Philip, Hermann Hoffman Philip, Gaston Pearson Philip, & Elizabeth Worthington Philip, commanding them and each of them to appear and answer the amended bill of complaint herein.

N. WILSON,
HANNA & JOHNSTON,
Compl't- & Soli's.
GEO. S. PEPPER.

CITY OF PHILADELPHIA, }
State of Pennsylvania, } *ss:*

I do solemnly swear that I have read the aforegoing amended bill by me subscribed and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and that the facts therein stated upon information and belief I believe to be true.

GEO. S. PEPPER.

230 Subscribed and sworn to before me this fourth day of July, A. D. 1882.

HOLSTEN D. E. HAVEN,
Notary Public.

Summons to Answer.

In the Supreme Court of the District of Columbia, July 24, 1882.

GEORGE S. PEPPER, Complainant,
against
A. R. SHEPHERD *et al.*, Defendant-. } No. 7803. Equity Docket 21.

The President of the United States to Samuel Cross, Peter F. Bacon, Andrew C. Bradley, Mercy Maria Carter Gray, Alexander R. Shepherd, & wife, Mary G. Shepherd, defendants:

You are hereby commanded to appear in this court at its first special term occurring twenty days after service of this subpœna and answer the exigency of the amendments to original bill under pain of attachment and such other process of contempt as the court shall award.

Witness D. K. Cartter, chief justice.

R. J. MEIGS, *Clerk, &c.*,
By R. J. MEIGS, JR., *Ass't Clerk.*

231 *Marchal's Returns.*

Summon'd def'ts Samuel Cross, July 25, 1882; Peter F. Bacon, July 25, 1882, and Andrew C. Bradley, July 24th, 1882; not to be found, def'ts Mercy Maria Carter Gray and Alexander R. Shepherd & wife, Mary G. Shepherd.

Sept. 5th, 1882.

C. E. HENRY, *Marchal.*

N. WILSON & HANNA & JOHNSTON.

In the Supreme Court of the District of Columbia, July 24, 1882.

GEORGE S. PEPPER, Complainant,
against
ALEXANDER R. SHEPHERD *et al.*, Defendants. } No. 7803. Equity Docket 21.

The President of the United States to Lewis J. Davis, James E. Fitch, George M. Barker, John Van Ness Philip, Herman Hoffman Philip, Gaston Pearson Philip, Elizabeth Worthington Philip, infants, heirs-at-law of Wm. H. Philips, dec'd; Wm. F. Mattingly, David L. Bartlett, defendant-:

You are hereby commanded to appear in this court at its first special term occurring twenty days after service of this subpœna and answer the exigency of the original bill and the amendments thereto under pain of attachment and such other process of contempt as the court shall award.

232 Witness D. K. Cartter, chief justice.

R. J. MEIGS, *Clerk, &c.*,
By R. J. MEIGS, JR., *Ass't Clerk.*

Marchal's Return.

Summon'd def'ts Lewis J. Davis & James E. Fitch, July 25, 1882, & George M. Baker & Wm. F. Mattingly, July 24th, 1882; not to be found the others.

Dated Sept. 3*th*, 1882.

C. E. HENRY, *Marchal.*

N. WILSON, HANNA & JOHNSTON.

Exceptions to Auditor's Report Withdrawn. Filed Sep. 11, 1882. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
ALEXANDER R. SHEPHERD *et al.* } 7803, Eq.

The complainant, by his counsel, Hanna & Johnston, hereby withdraws the exceptions filed herein on the 17th day of July, 1882, to the auditor's report herein filed on the 29th day of June, 1882.

HANNA & JOHNSTON,
Of Counsel — Complainant.

233 *Auditor's Report Ratified. Filed Sep.* 11, 1882. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
ALEXANDER R. SHEPHERD *et al.* } 7803, Equity.

It appearing to the court that the exceptions filed by the complainant to the auditor's report filed herein on the 29th day of June, 1882, have been withdrawn, and that no other exceptions have been filed to the said report, it is thereupon, this 11th day of September, A. D. 1882, ordered that the said report be, and the same hereby is, ratified and confirmed; and it is further ordered that the defendants, Mattingly and Bradley, be, and they are hereby, directed to pay over to the receiver in this cause the proportion of rents and moneys collected by them from the premises, to wit, sub-lot 3 and the improvements thereon, as ascertained by the auditor in his said report to be payable to — thereof; and it is further ordered that the said receiver shall pay over to said Shepherd, or his counsel of records, such proportion of the rents as have come or shall come into his hands and found by the auditor in his said report to be properly allowable as rent for the use of the furniture in the said premises.

A. B. HAGNER,
Asso. Justice.

234 *Order for Def't Shepherd to Appear. Filed Sep.* 12, 1882. *R. J Meigs, Clerk.*

In the Supreme Court of the District of Columbia, this 12th day of September, A. D. 1882.

GEORGE S. PEPPER
vs.
ALEXANDER R. SHEPHERD *et al.* } No. 7803, Equity.

On motion of the complainant, by Messrs. Hanna & Johnston, his solicitors, it is ordered that the defendants, Alexander R. Shepherd and Mary G. Shepherd, cause their appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the court:

A. B. HAGNER,
Asso. Justice.

Answer of L. J. Davis. Filed Oct. 3, 1882. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia, Holding a Special Term. In Equity.

GEORGE S. PEPPER
vs.
ALEXANDER R. SHEPHERD *et al.* } No. 7803.

The answer of Lewis J. Davis, trustee, to the bill and amended bill in this cause filed.

This defendant says that he has no knowledge of the facts
235 alleged beyond this, that he is one of the trustees in the trust deed to secure the defendant, Mercy M. C. Gray, and that the indebtedness for the security of which said trust deed was given is still due and unpaid and the interest thereon is due from May 15th, 1877.

LOUIS J. DAVIS.

HENRY WISE GARNETT,
Sol'r for Def'ts.

I do solemnly swear that I have read the answer by me subscribed and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and that the facts therein stated upon information and belief I believe to be true.

LOUIS J. DAVIS.

Subscribed and sworn to before — this third day of October, 1882.

JOHN T. ARMS,
Notary Public.

Answer of Jas. E. Fitch. Filed Oct. 3, 1882. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia, Holding a Special Term.

GEORGE S. PEPPER
vs.
ALEXANDER R. SHEPHERD *et al.* } No. 7803.

The answer of James E. Fitch, trustee, to the bill and amended bill in this cause filed.

236 This defendant, in reply to so much of the bill and amended bill as he is advised it is necessary for him to answer, answering, says that he is one of the trustees in the trust deed to secure the defendant, Mercy M. C. Gray, and he is informed *to* believe- that the debt secured by said trust deed has not been paid and is overdue, and the interest is due thereon from May 15th, A. D. 1877; that at the time the said trust deed was given this defendant was informed and believed that it was a second lien on the front portico of the property on K St. and was a first lien on the rear portion of the property on which it was placed; that the said trust deed was ready and accepted by the defendant Gray with that distinct understanding.

JAMES E. FITCH.

HERNY WISE GARNETT,
Sol'r for Def't.

I do solemnly swear that I have read th*at* answer by me subscribed and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and that the facts therein stated upon information and belief I believe to be true.

JAMES E. FITCH.

Subscribed and sworn to before me this third day of October, A. D. 1882.

GEO. H. B. WHITE,
Notary Public.

237 *Answer of Cross & Bacon. Filed Oct.* 3, 1882. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
ALEXANDER R. SHEPHERD *et al.* } No. 7803, Equity.

The answer of Samuel Cross and Peter F. Bacon to the amend- bill of complaint of the above-named plaintiff.

These defendants, for answer to said amended bill or to so much thereof as they are advised it is material for them to make answer unto, say:

1. To the amendment to the first paragraph of the 16th section of the original bill they say that they deny that said lot No. 3, in square No. 164, with the improvements thereon, is a wholly insufficient security for the debt due the plaintiff, and to the contrary they aver as in their answer to said paragraph of the original bill they have heretofore averred.

2. They do not know but they presume that the children of William H. Philip are properly named in this paragraph of the amended bill.

3. That the proposed offer in this paragraph of the amended bill is no waiver or surrender of any right or interest, and that
238 the plaintiff, under the circumstances, is entitled to no relief, and they pray the same advantage of this objection as if they had specially demurred to the bill *or* on that ground; and, having fully answered, &c.

SAM. CROSS.
PETER F. BACON.

WM. F. MATTINGLY,
A. C. BRADLEY, *Sol'rs.*

Samuel Cross and Peter F. Bacon, being duly sworn, say that they have read the above answer by them signed and know the contents thereof, and that the facts therein stated of their own knowledge are true, and that the facts stated upon information received from others they believe to be true.

SAM. CROSS.
PETER F. BACON.

Subscribed and sworn to before me this 3 day of October, 1882.

SAM'L C. MILLS,
Notary Public.

Answer of A. C. Bradley. Filed Oct. 3, 1882. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
ALEXANDER R. SHEPHERD *et al.* } No. 7803, Equity.

The answer of Andrew C. Bradley, one of the defendants, to the
239 amended bill of complaint of the above-named plaintiff.

For answer unto so much of said bill as he is advised it is material for him to make answer to he says:

1. He denies, upon information and belief, that the said lot No. 3 and improvements are inadequate security for the plaintiff's debt, and that it could not be sold now for a sum sufficient to meet the plaintiff's claim, and that said lot and improvements will not yield an adequate income on its value.

2. He admits the allegation of the second paragraph of the amended bill.

3. He says that the plaintiff- proposed offer in the third paragraph does not amount to and is not a waiver or surrender of any right or interest claimed under said deed from Philip and Johnston.

And, having fully answered, &c.

A. C. BRADLEY.

I swear that I have read the foregoing answer by me subscribed and know its contents, and that the facts therein stated of my own knowledge are true, and that the facts stated upon information received from others I believe to be true.

A. C. BRADLEY.

240 Subscribed and sworn to before me this 3d day of October, 1882.

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, *Ass't Clerk.*

241 *Answer of Geo. M. Barker. Filed Oct.* 4, 1882. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
ALEXANDER R. SHEPHERD *et al.* } No. 7803, Equity.

The answer of George M. Barker to the bill and amended bill in this cause respectfully shows that to so much of said original and amended bills as he is advised it is proper or necessary he should make answer he says that he is no longer a creditor of the said Alexander R. Shepherd, his claims having been paid by a part payment of his debt in cash and a conveyance of land in a compromise settlement for the balance.

And, having fully answered so much of said bills as relate to him, he prays to be hence dismissed with his reasonable costs.

GEO. M. BARKER.

DISTRICT OF COLUMBIA, *ss:*

On this — day of ——, A. D. 1882, personally appears George M. Barker &, having been duly sworn, deposes & says: "I do solemnly swear that I have read the answer by me subscribed and know the contents thereof, and the facts therein stated upon my personal knowledge are true, and that the fact- therein stated upon
242 information and belief I believe to be true."

—— ——.

Affidavit to answer waived.

HANNA & JOHNSTON,
Sol'rs for Complainant.

Oct. 3d, 1882.

Motion of M. M. C. Gray for Time to Answer. Filed Oct. 5, 1882.
R. J. Meigs, Clerk.

In the Supreme Court of the District of Columbia, the 3rd Day of October, 1882.

PEPPER
vs.
SHEPHERD *et al.* } No. 7803.

And now comes the defendant, Mercy M. C. Gray, by her solicitor, Henry Wise Garnett, — moves the court for additional time to file her answer to the amended bill in this cause for the reason that the said defendant resides in the State of California, and her answer to said amendid bill was duly prepared and mailed to her on September 18th, A. D. ——, but has not yet been returned.

To Hanna & Johnston, solicitors for compl't.

GENTLEMEN: Take notice that the above motion will be called up on Thursday, Oct. 5th, 1882, at 10 o'clock a. m., or so soon thereafter as counsel can be heard.

Resp'ct'ly, HENRY WISE GARNETT,
Sol'r for D'f't Gray.

243 *M. M. C. Gray Allowed Time to Answer. Filed Oct.* 5, 1882.
R. J. Meigs, Clerk.

In the Supreme Court of the District of Columbia, Holding a Special Term. In Equity.

PEPPER
vs.
SHEPHERD *et al.* } No. 7803.

This cause coming on to be heard on the motion of Mercy M. C. Gray, by her solicitor, Henry Wise Garnett, to extend the time for filing her answer to the amended bill, it is this 5th day of October, A. D. 1882, ordered that 20 days be, and the same *is*, allowed and granted to the said defendant Gray in which to file her answer.

A. R. HAGNER,
Asso. Justice.

Answer of M. M. C. Gray. Filed Oct. 11, 1882. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia, Holding a Special Term. In Equity.

GEORGE S. PEPPER
vs.
ALEXANDER R. SHEPHERD *et al.* } No. 7803.

The answer of Mercy Maria Carter Gray to the amendments to the bill of complaint in this cause filed.

This defendant, having already answered the bill of complaint, in answer to the amendments thereto says:

244 1. To the amendment to the first paragraph she says that it is not true, as alleged by the complainant, that the real estate known as lot 3, in square 164, in the city of Washington, with the improvements thereon, -as an insufficient security for the debt admitted by the defendant Shepherd to be due to the complainant; and she further denies that the debt due from the defendant Shepherd to the complainant is charged upon the whole of lot 3, but is charged only upon that portion of lot 3 which was formerly known as part of subdivision lot 2; and this defendant avers that that portion of lot 3 is amply sufficient security for the said debt above referred to, and on a fair sale of the property at an adequate price would realize more than sufficient to pay all the debt properly due from the defendant Shepherd to the complainant; that said property brings in a large rent, but this defendant is not advised of the amount of the debt admitted by the defendant Shepherd to be due to the complainant; therefore cannot state whether the rents from the said property on which the said debt is charged are an adequate income, nor is this defendant advised from the complainant's bill and the amendments thereto for what such income should be adequate.

245 2. To the amendment to the 19th paragraph to the bill this defendant says that, on information and belief, she admits the allegations therein made.

3. To the amendment to the 20th paragraph to the bill this defendant says, on information and belief, that it is not in the power of the complainant to make or carry out the offer therein contained; that if any title passed to the complainant by the said pretended sale by the trustees, Philip and Johnston, to him, and the deed in pursuance thereof, said complainant has no right in this cause and no power to institute it or proceed with it; that if, to the contrary, no title passed to the complainant by the said pretended sale, then the offer contained in this amendment was a vain and useless form.

4th. To the 4th, 5th, and 6th amendments this defendant is advised that it is not necessary and material for her to answer; and

this defendant, having fully answered, prays to be hence discharged with reasonable costs in this cause incurred.

MERCY MARIA C. GRAY.

HENRY WISE GARNETT,
Sol'r for D'f't.

246 I do solemnly swear that I have read the above answer, by me subscribed, and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and that the facts therein stated upon information and belief I believe to be true.

MERCY MARIA C. GRAY.

Subscribed and sworn to before me this 29th day of September, A. D. 1882.

JOS. R. ENGLISH,
Notary Public.

Filed Oct. 11, 1882. *R. J. Meigs, Clerk.*

STATE OF CALIFORNIA, }
County of Solano, } *ss:*

I, Joel A. Harvey, county clerk in and for said county and State and *ex officio* clerk of the superior court of said Solano county (the same being a court of record), do hereby certify that Jos. R. English, Esq., whose name is subscribed to the annexed jurat, was at the date thereof & still is a notary public in and for the said county, duly qualified and acting as such, and that his signature thereto is genuine. I further certify that the said jurat is made and executed in accordance with the laws of the State of California.

In witness whereof I have hereunto set my hand and affixed the seal of said court this 30th day of September, 1882.

JOEL A. HARVEY,
County Clerk and ex Officio Clerk of said Superior Court.

247 *Pro Confesso vs. W. F. Mattingly. Filed Oct.* 17, 1882. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
ALEXANDER R. SHEPHERD *et al.* } No. 7803, Equity.

The defendant, William F. Mattingly, having appeared to the original bill and the amendments thereto, but failing to file his answer thereto, it is thereupon, this 19th day of October, A. D. 1882, ordered that the said original bill and the amendments thereto be, and the same are hereby, taken *pro confesso* against the said defendant.

A. B. HAGNER,
Asso. Justice.

Auditor's fee—Motion to Pay. Filed Oct. 17, 1882. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
A. R. SHEPHERD *et al.* } 7803, Equity.

The complainant, by his solicitors, Hanna & Johnston, moves the court to pass an order directing the payment by the defendant, A. R. Shepherd, of the auditor's fees for the report heretofore filed in this cause, the amount thereof being fifty dollars.

HANNA & JOHNSTON,
Sol's for Compl't.

248 *Replication. Filed Oct.* 30, 1882. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
ALEXANDER R. SHEPHERD *et al.* } No. 7803, Eq.

The complainant hereby joins issue with the defendants, Lewis J. Davis, James E. Fitch, Samuel Cross, Peter F. Bacon, L. M. Barker, Andrew C. Bradley, and Mercy Maria Carter Gray.

HANNA & JOHNSTON,
Solicitor- for Compl't.

Motion that Receive- Pay Taxes. Filed Nov. 4, 1882. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
ALEXANDER R. SHEPHERD. } In Equity. No. 7803.

And now comes complainant, by N. Wilson & Hanna & Johnston, his counsel, and moves the court to order the payment by the receiver from the fund & in his hands the taxes now in arrears on the real estate mentioned in the proceedings & from which said receiver has collected rents.

N. WILSON,
HANNA & JOHNSTON,
Sol'r- for George S. Pepper.

Please take notice that the above motion, as well as the motion heretofore filed by us for the payment of the auditor's fee due
249 to James G. Payne, will be called up for hearing on Tuesday, the 7th day of Nov., 1882, at 10 a. m., or as soon thereafter as counsel can be heard.

N. WILSON,
HANNA & JOHNSTON, *Sol'r-.*

Motion to Pay Auditor's Fee Overruled. Filed Nov. 7, 1882. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

PEPPER
vs.
SHEPHERD *et al.* } No. 7803, Equity.

This cause having been heard upon the motion of complainant filed October 17, 1882, for an order upon complainant to compel the defendant, Alexander R. Shephed, to pay the auditor's fee for the report hereto, filed in this cause, upon argument and consideration thereof it is by the court, this 7th day of November, 1882, ordered that the said motion be overruled.

A. B. HAGNER,
Asso. Justice.

Filed Nov. 10, 1882. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

PEPPER
vs.
SHEPHERD *et al.* } No. 7803.

Upon motion of the receiver in above-entitled cause, and with consent of the counsel for the several parties, it is, this 10th
250 day of November, ordered that the receiver cause the furnace in premises No. 1705 K St. N. W. to be repaired, and that he be allowed the cost thereof in the settlement of his accounts.

A. B. HAGNER,
Asso. Justice.

We consent that the repairs be made, and that the receiver pay for the same and be allowed therefor in his account.

WM. F. MATTINGLY,
A. C. BRADLEY,
Att'ys for Shepherd.
HANNA & JOHNSTON,
Att'ys for Complainant.

November 8, '82.

Answer of A. R. Shepherd to Amended Bill. Filed Nov. 24, 1882. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
ALEXANDER R. SHEPHERD *et al.* } No. 7803, Equity.

The answer of Alexander R. Shepherd, one of the defendants, to the amended bill of complaint of the above-named plaintiff.

This defendant, for answer to said amended bill or to so much thereof as he is advised is material for him to make answer unto, answering, says:

No. 1. To the amendment to the first paragraph of the 16th section of the original bill he denies that said lot No. 3, in square
251 No. 164, with the improvements thereon, is a wholly insufficient security for the debt due the plaintiff and charged thereon, and, on the contrary, avers that the same is more than amply sufficient to secure said indebtedness, and he believes that the same could be sold for more than sufficient to pay said indebtedness and could be rented for sufficient to keep down all proper interest, taxes, and expenses.

2. He presumes that the children of William H. Philip are properly named in this paragraph of the amended bill.

3. That the proposed offer in this paragraph of the amended bill is no actual surrender of any interest or waiver of any right, and this defendant re-asserts, in answer to this paragraph, the matter set up in his answer to the original bill, and prays that he may have the same advantage as if he had demurred to said original and amended bills; and, having fully answered, this defendant prays to be hence dismissed with costs in this behalf most unjustly sustained, &c.

ALEXANDER R. SHEPHERD.

A. C. BRADLEY,
WM. F. MATTINGLY,
G. TOTTEN,
Sol'rs for Def't.

252 Alexander R. Shepherd, being duly sworn, says that he has read the foregoing answer by him subscribed and knows the contents thereof, and that the facts therein stated of his own knowledge are true, and that those stated upon information received from others he believes to be true.

ALEXANDER R. SHEPHERD.

Subscribed and sworn to before me this 13th day of November, 1882.

LOUIS H. SCOTT,
U. S. Counsel.

Repairs—Receiver to Make. Filed Nov. 29, 1882. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

PEPPER
vs.
SHEPHERD *et al.* } In Equity. No. 7803.

The undersigned, receiver in the above-entitled cause, respectfully reports to the court that in the month of October last he was applied to by the tenants of the premises No. 1705 K St. northwest (which are involved in the proceedings, the rent of which under the decree appointing him he collects monthly) to inspect the premises in regard to certain repairs needed thereon.

This receiver thereupon made a personal inspection of the
253 premises from the top story to the ground floor, and found a number of places from which the heavy plaster molding and cornice had fallen away and wide cracks in the walks on each floor, and in places the ceiling cracked and ready to fall.

Not feeling competent to decide upon such repairs as were absolutely necessary for the protection of the property and to keep it in a tenantable condition, this receiver requested Mr. Robert I. Fleming, a most competent builder, to examine and report to him what repairs were needed.

He verbally reported to me that to replace all the damaged plastering, repair all the cracks, and renew the frescoing where destroyed would involve an expense of upwards of thirteen hundred dollars.

He was then requested to report in writing as to the repairs absolutely needed to replace the falling cornices and plastering and such as were proper to make the building as presentable and as comfortable as when rented, and have received the report filed herewith, which is in detail, and this receiver respectfully submits the same to the court and asks instructions in the premises and for such authority to make all or any of the repairs indicated in Mr. Fleming's
254 report, believing that the estimated cost is reasonable.

Respectfully submitted,

F. P. B. SANDS, *Receiver.*

Office of Robert I. Fleming, builder.

WASHINGTON, D. C., *Nov. 28th*, 1882.

Mr. L. P. B. Sands.

D'R SIR: To make the falling repairs to the house now occupied by the Chinese legation would cost the sum of two hundred & eighty-nine .50 dollars $289.60.

Reset a newal caps main stairway.
Repair plastering, hall stairscase girder.
" frescoing " " " "
Rehang one sash & glaze with enameled glass.
Furnish 4 globes for pantry chandelier.

Repair plastering in dome over stairway.
" frescoing " " " "
" tin & slate roofs.
Furnish & set 4 lights, hammered glass, in skylights.
Clean out laundry flew [flue].
10 ft. new tin conduction pipe, west side.
Repairing joist & flooring under bath-tub in basement.
Very truly yours, ROBERT I. FLEMING.

255 *Order for Receiver to Make Repairs. Filed Dec.* 1, 1882. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

PEPPER
vs.
SHEPHERD *et al.* } In Equity. No. 7803.

Upon consideration of the report of F. P. B. Sands, receiver in said cause, filed on 29th day of November, it is, this 1st day of December, A. D. 1882, ordered that the said receiver cause to be made the repairs indicated in the estimate of Robert I. Fleming annexed to said report at an expense not exceeding the estimated cost as mentioned by said Fleming, and that the receiver in his accounts be allowed for the cost of said repairs.

A. B. HAGNER,
Asso. Justice.

Decree- Pro Confesso vs. W. F. Mattingly Vacated. Filed Dec. 1, 1882. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
A. R. SHEPHERD *et al.* }

By consent of plaintiff's solicitors it is, this first day of December, A. D. 1882, ordered, adjudged, and decreed that the decrees *pro confesso* herein heretofore passed against the defendant, William F. Mattingly, be, and the same hereby are, vacated and amended.

A. B. HAGNER,
Asso. Justice.

256 Filed Dec. 1, 1882. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
ALEXANDER R. SHEPHERD *et al.* } 7803, Equity.

We hereby consent that the decrees *pro confesso* heretofore ren-

dered against the defendant, William F. Mattingly, in the above-entitled cause may be rescinded, provided he file his answer, plea, or — to the original bill and the amendments thereto within five days from this date.

HANNA & JOHNSTON,
Solicitors for Complainant.

Nov'b'r 25th, 1882.

Plea of W. F. Mattingly.

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
ALEXANDER R. SHEPHERD *et al.* } No. 7803, Equity.

The plea of William F. Mattingly, defendant, to the bill of complaint of George S. Pepper, complainant, against him and others in equity exhibited.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in said complainant's original bill of complaint as amended mentioned and contained to be
257 true in such sort, manner, and form as the same are therein set forth and alleged, for plea to the whole of said bill saith that said William H. Philip and James H. Johnston, by virtue of said decree of your honorable court passed in said equity cause No. 6201 referred to in the 9th paragraph of said bill, proceeded to act as trustees under said deed of trust recorded in Liber No. 754, folio 51 *et seq.*, of said land records, and in consequence of default made by said Alexander R. Shepherd in the payment of said promissory notes secured thereby, and upon the request and by the direction of said complainant, proceeded to execute the trusts of said deed by duly advertising said real estate therein described for sale at a certain designated time at public auction on the 23 day of October, 1879, in front of said premises, when and where said Philip and Johnston, as such trustees, were present and sold said real estate to said complainant for the sum of fifty thousand dollars, su-ject to taxes, he being the highest bidder therefor; that said complainant paid said taxes upon said property and credited the net proceeds of said sale upon the notes secured by said deed of trust.

That thereupon said Philip and Johnston, pursuant to the provisions of said deed of trust, by their certain indenture duly executed and acknowledged, conveyed said real estate unto said
258 complainant in fee simple, which said deed was duly delivered to said complainant and by him caused to be recorded in the land records of the District of Columbia.

That thereafter, to wit, on the 14th day of November, 1879, said defendant, Alexander R. Shepherd, filed his bill of complaint against said George S. Pepper in your honorable court, the same being equity cause No. 7052, aver-ing and praying as set forth therein and as

charged in the averment relative thereto in the 10th paragraph of said bill in this cause.

That said Pepper filed his cross-bill therein against said Shepherd, seeking thereby to have a receiver appointed to collect the rents of said property and an injunction to prevent said Shepherd from receiving them and writ of assistance to put him, said Pepper, in possession of said premises; that proofs were taken upon both sides, and upon final hearing the court, on October 30th, 1880, passed a decree dismissing said bill of complaints, which said decree now remains in full force and effect, not reversed or annulled, and is as follows, to wit:

259 In the Supreme Court of the District of Columbia.

ALEXANDER R. SHEPHERD *vs.* GEORGE S. PEPPER *et al.* } No. 7052.

This cause coming on to be heard upon bill, cross-bill, answers, replications, and testimony, and having been argued by counsel on both sides and fully considered by the court, the said cause having been referred for hearing to Justice James by the judge holding the special term in equity, it is thereupon, this 30th day of October, ordered, adjudged, and decreed that the said bill be, and the same hereby is, dismissed at the complainant's cost.

From this decree the said complainant appeals to the general term.

CHAS. P. JAMES, *Justice.*

That said complainant, George S. Pepper, ever since said conveyance to him by said Philip and Johnston, trustees as aforesaid, has claimed to be the owner of said property in fee simple, and still so claim-.

All which matters and things this defendant doth aver and plead in bar to said complainant's bill, and prays the judgment of this honorable court whether he should make any further answer
260 thereto, and prays to be hence dismissed with cost.

WM. F. MATTINGLY.

I, Wm. F. Mattingly, do swear that the foregoing plea is not — for delay and is true in —.

WM. F. MATTINGLY.

Subscribed and sworn to before me this 1st day of December, 1882.

——— ———.

I do hereby certify that in my opinion the foregoing plea is — in point of law.

W. F. MATTINGLY,
Counsel, &c.

Motion of A. R. Shepherd to Dissolve Injunction. Filed Dec. 1, 1882.
R. J. Meigs, Clerk.

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
ALEXANDER R. SHEPHERD *et al.* } No. 7803, Equity.

And now comes the defendant, Alexander R. Shepherd and, by his solicitors, moves the court to dissolve the injunction heretofore granted and to discharge the receiver heretofore appointed upon the bill and amended bill, answers, and affidavits in support thereof, pleas, and stipulation filed in said cause.

261 WM. F. MATTINGLY,
ENOCH TOTTEN, &
A. C. BRADLEY,
Sol'rs for Def't.

To Messrs. Hanna & Johnston, Nath'l Wilson, sol'rs for pl'ft:

Please take notice that on Tuesday, December 5th, 1882, at the opening of the court in special term or as soon thereafter as counsel can be heard, we will call up the above motion for hearing.

W. F. MATTINGLY,
E. TOTTEN, &
A. C. BRADLEY,
Sol'rs for Def't.

Service of copy acknowledged Dec. 1, '82.
HANNA & JOHNSTON,
Sol'rs for Complainant.

Filed Dec. 27, 1882. R. J. Meigs, clerk.

UNITED STATES OF AMERICA, } *ss:*
District of Columbia, }

On this twenty-eighth day of September, A. D. 1882, personally appeared before me, the undersigned, a U. S. commissioner in and for the District aforesaid, John L. Ginck, being personally well known to me, and made oath in due form of law to the following statement, viz: That affiant is the publisher of the "Washington Law Reporter," a newspaper published in the city of Wash-
262 ington, D. C.; that the annexed notice was published in said "Washington Law Reporter" once a week for three successive weeks as follows: Sept. 13th, 20th, 27th, 1882.

JOHN S. GINCK.

Sworn and subscribed before me the day and year above written.
LUCIAN O'BRIEN,
United States Commissioner.

Pro Confesso vs. Mary G. Shepherd. Filed Dec. 27, 1882. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
ALEXANDER R. SHEPHERD *et al.* } No. 7803, Equity.

It appearing to the court that the order of publication passed in this cause on the 12th day of September, 1882, has been duly published and the defendant, Mary G. Shepherd, having failed to appear and answer the amendments to the original bill herein, it is, on motion of Messrs. Hanna & Johnston, solicitors for complainant, this 27th day of December, A. D. 1882, ordered that the said amendments be, and they hereby are, taken *pro confesso* against said defendants, Mary ——.

A. B. HAGNER,
Asso. Justice.

263 *Replication. Filed Dec.* 27, 1882. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
ALEXANDER R. SHEPHERD *et al.* } 7803, Equity.

The complainant hereby joins issue on the answer of Alexander R. Shepherd last filed in this case.

HANNA & JOHNSTON,
Sol's for Complainant.

Summons to Answer Original & Amended Bills.

In the Supreme Court of the District of Columbia, January 2nd, 1883.

GEORGE S. PEPPER, Complainant,
against
ALEX. R. SHEPHERD *et al.*, Defendant. } No. 7803. Equity Docket 21.

The President of the United States to John Van Ness Philips, Herman H. Philips, Gaston P. Philips, and Elizabeth W. Philips, infants, defendants:

You are hereby commanded to appear in this court at its first special term occurring twenty days after service of this subpœna and answer the exigency of the original and amended bills under pain of attachment and such other process of contempt as the court shall award.

264 Witness D. K. Cartter, chief justice.

R. J. MEIGS, *Clerk, &c.*,
By R. J. MEIGS No. 3, *Ass't Clerk.*

Marshal's Return.

Summoned all the defendants January 2n-, 1883.
CLAYTON McMICHAEL, *Marshal.*

In the Supreme Court of the District of Columbia, the 4th day of January, A. D. 1883.

Order Appointing Guard. ad Litem. Filed Jan. 4, 1883. *R. J Meigs, Clerk.*

GEORGE S. PEPPER
vs.
A. R. SHEPHERD *et al.* } No. 7803, Equity.

On motion of Messrs. Hanna & Johnston, solicitors for the complainant herein, it is, this fourth day of January, A. D. 1883, ordered that Charles Worthington be, and he hereby is, appointed guardian *ad litem* for the infant defendants, John Van Ness Philip, Herman Hoffman Philip, Gaston Pearson Philip, and Elizabeth Worthington Philip.

A. B. HAGNER,
Asso. Justice.

265 *Answer of Guard. ad Litem. Filed Jan.* 4, 1883. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
ALEXANDER R. SHEPHERD *et al.* } No. 7803, Equity.

The joint and separate answer of the defendant-, John Van Ness Philip, Herman Hoffmann Philip, Gaston Pearson Philip, and Elizabeth Worthington Philip, by Charles Worthington, their guardian, respectfully shows—

1. That they have no knowledge of any of the matters and things contained in the said bill and amended bill of complaint, and can neither admit nor deny the truth thereof.

2. That they are infants under the age of twenty-one years, and they therefore submit their rights to the protection of this court.

CHARLES WORTHINGTON.

DISTRICT OF COLUMBIA, *ss:*

I do solemnly swear that I have read the answer by me above subscribed and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and the facts therein stated upon information and belief I believe to be true.

CHARLES WORTHINGTON.

266 Subscribed and sworn to before me this 4th day of December, A. D. 1882.

R. J. MEIGS, *Clerk*,
By M. A. CLANCY, *Ass't Clerk.*

Motion to Dissolve Injunction Overruled. Filed Jan. 16, 1883. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
A. R. SHEPHERD *et al.* } 7803, Equity.

The motion filed herein on the first day of December, A. D. 1882, coming on to be heard, and the same having been a-gued by counsel and considered by the court, it is, therefore, this sixteenth day of January, A. D. 1883, ordered that the said motion be, and the same hereby is, overruled.

A. B. HAGNER,
Asso. Justice.

267 *Answer of Jas. M. Johnston. Filed Feb.* 11, 1883. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
ALEX. R. SHEPHERD *et al.* } In Equity. No. 7803.

The answer of James M. Johnston to the original & amended bills of complaint of Geo. S. Pepper against him and others in chancery exhibited.

To so much of said bill as this defendant is advised it is necessary and material for me to answer, I say as follows:

1, 2, 3, 4. I admit the averments of the 1st, 2nd, 3rd, & 4th paragraphs of the complainant's bill.

5. I admit the averments of the 5th paragraph of said bill, except that I have no personal knowledge of the exact amount due said Pepper for disbursements by him on account of the real estate referred to in the preceding paragraphs, nor of the exact amount of interest due said Pepper.

6, 6½, 7, & 8. On information and belief I admit the averments of paragraphs 6, 6½, 7, & 8 of said bill of complaint.

9, 10, & 11. In so far as paragraphs 9, 10, & 11 *attempt* to
268 set out the pleadings and other matters of record in causes No. 6201 and 7052, I prefer to refer directly to the original records in said causes, though the said records seem to be set out in the bill of complaint herein with substantial accuracy.

Further answering said paragraphs 9, 10, & 11, I say that because the decree and pleadings in # 6201, equity, the several argument- in

that cause, the order of court, and other reasons seemed to make it plain that I had been properly appointed in the place of Mr. Bradley as trustee in the earlier — of the deed of trusts on the real estate (*i. e.*, in the deed recorded in Liber 754, folio 5). I consented, at the request of the complainant herein, to unite with my co-trustee in making the public sale of the real estate embraced in that deed.

If I had supposed that there was any serious objection to my power to sell I would not have attempted to make a sale at all; but as the court had refused to interfere, though it had been asked to do so by Mr. Shepherd, and as my own opinion was that no serious objection could be made to my power, I, with my co-trustee, made the public sale and conveyed the title to the purchaser at
269 that sale.

Further answering, I say that as I was in California at the time the decree in No. 7052 dismissing the bill was entered I have no personal knowledge of what took place at that time.

Subsequently I learned that the court had dismissed that bill because, though it had decided that the trustees had no power to make the said sale, it had also decided that the sale by the trustees and the deed in fee from them to Mr. Pepper constituted no cloud on the title to the property, because the want of power of the trustees to make such sale and to execute such deed was apparent on the face of the several records.

Such being the views of the court, it further decided that it had no jurisdiction to grant the prayers in 7052, equity.

12. I admit the facts alleged in the 12th paragraph of the bill of complaint, except that I have no personal knowledge of the circumstances attending the preparation of the two deeds of trust to secure complainant.

13, 14, & 14½. I have no personal knowledge of the facts alleged in the 13th, 14th, & 14½ paragraphs of said bill.

270 15 & 16, 17 & 18. On information and belief, I admit the facts alleged in paragraphs 15, 16, & 17 & 18 of said bill.

Further answering, I say that as trustee, appointed by this court and permitted by the court to act in connection with the trust estate, I desire the court to take possession of the whole property and fully dispose of all the interests of all the parties therein, and to relieve me from any further care in the matter, since it has been determined by the court that I had not the power to act as trustee.

I am willing to make any conveyance or transfer that the court may require in order that I may be thus relieved. This offer is not conditional on any theory of adjustment or decision by the court, but is an absolute tender of the whole of whatever title or interest may be vested in me.

JAMES M. JOHNSTON.

271 DISTRICT OF COLUMBIA, *ss:*

I do solemnly swear that I have read the above answer by me subscribed and know the contents thereof, and that the facts therein stated upon my personal knowledge are true and that the facts therein stated upon information and belief I believe to be true.

JAMES M. JOHNSTON.

Subscribed and sworn to before me this 1st day of February, A. D. 1883.

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, No. 3,
Ass't Clerk.

272 EXHIBIT A. Filed Feb. 8, 1883. R. J. Meigs, Clerk.

Wm. F. Mattingly & A. C. Bradley, Att'ys for Alex. R. Shepherd, in Ac. with F. P. B. Sands, Rec'r.

Amount of rent for house and furniture of house 1705 K street N. W. accrued and collected from July 20, '81, to March, 1882, inclusive, eight months, @ $500 per month	$4,000
Am't as ascertained by report of auditor and approved by the court Sept. 11, 1882, to be proportionate part of rent on ac. of furniture in said house, $200 per mo	1,600
Am't to be turned over to Sands, rec'r	$2,400
Credit on ac. payable under order Sept. 11, '82, from funds in his hands as receiver, to & inclusive of Oct., '82	1,400
Balance due Sands, rec'r	1,000

Rec'd pay't.
Settled October 5th, 1882.

A. C. BRADLEY,
WM. F. MATTINGLY,
Att'ys for Shepherd.

273 EXHIBIT B. Filed Feb. 8, 1883. R. J. Meigs, Clerk.

Robert I. Fleming, builder, L St., between 12th and 13th Sts. N. W.

WASHINGTON, D. C., *Jan'y 6th*, 1883.

F. P. B. Sands, Esq.

DEAR SIR: In accordance with your request, we desire to state that in our examination made in November, 1882, of the building corner of Conn. Ave. and K street, occupied by the Chinese legation, we found that nearly all of the large rooms in the upper stories were loaded with what appeared to be large boxes of goods, the weight of which has to some extent settled and cracked the plastered partitions, walls, and ceilings.

Very resp't'y,
ROBERT I. FLEMING, *Builder.*
WM. E. SPALDING & CO., *Painters.*
GEO. W. HARKNESS, *Plasterer.*

Report of Receiver. Filed Feb. 8, 1883. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

PEPPER *et al.*
vs.
SHEPHERD *et al.* } In Equity. No. 7803.

The report of F. P. B. Sands, receiver in above cause, respect-
274 fully shows that on the 28th day of February, 1882, he was, by decree of this honorable court, appointed receiver, with authority and instructions to collect, demand, and receive the rents due and payable from July 20, 1881, from the tenants of house No. 1705 K St. northwest, in this city, and the furniture therein, and to receive from Andrew C. Bradley and Wm. F. Mattingly such sum or sums of money as they may have collected from the said tenants since said 20 July, 1881.

That having duly qualified as such receiver pursuant to the requirements of said decree, this receiver promptly made demand on 1st day of March, 1882, of Andrew C. Bradley for the rent collected by him and referred to in said decree. Mr. Bradley admitted the possession of rents from 20 July, 1881, in amount $4,000. The demand was repeated by this receiver, who informed said Bradley that, for the protection of the surety on receiver's bond, he must insist on compliance with the decree of the court. Mr. Bradley declined to pay at once and requested this receiver to await the determination of an application to be made by Messrs. Mattingly & Bradley for an order of the court setting apart a portion of said rent as rent of the furniture in said premises, which should be payable to them-
275 selves, as attorneys for the owner, A. R. Shepherd.

This receiver thereupon obtained the verbal consent of the solicitors for complainant to this delay in the demand for said rents so held by Messrs. Bradley & Mattingly, and the question was afterwards, on their application referred by the court to the auditor for examination and report.

The report of the auditor allowing the sum of two hundred ($200) dollars (as the proper portion of the monthly rent of five hundred dollars received for the furnished premises) on account of rental of furniture in said premises was ratified by this court on 11th day of September, 1882.

On the fifth day of October, 1882, a settlement of the rent collected since July 20, 1881, upon the basis of apportionment fixed by this last order of the court was made between said Messrs. Mattingly & Bradley, att'ys for Shepherd, and this receiver, and will appear from the memorandum of said settlement filed herewith, Exhibit A, showing the sum of $4,000, so withheld by said Bradley & Mattingly, and, after crediting them with the proportion of the rents collected by this receiver (to be payable under the order of apportionment of Sept., 1882), the balance, $1,000, was then paid to this receiver.

276 This receiver reports that from the date of his appointment and qualification he has regularly collected the rents as they

have fallen due from the tenants, and has deposited them in the banking-house of Riggs & Co., and has as regularly paid the proportions payable to Messrs. Mattingly & Bradley, as required by the said order of 11 Sept., 1882.

Your receiver respectfully reports that from time to time, at the request of the Chinese legation in possession as tenants, he has inspected in person the premises as to certain repairs needed thereon, and where minor repairs were requisite he has consulted with the solicitors for the parties to the proceedings, and with their written consent, which is indorsed upon the vouchers which this receiver holds, he made the proper repairs and asks to be allowed the cost thereof.

In other cases when the cost of the repairs required a larger expenditure the facts were by your receiver submitted in reports to the court and its authority obtained to make certain specified repairs at an expenditure fixed by the court, to which reports and orders this receiver respectfully refers as a part hereof, and for which expenditures he prays that he may be credited.

277. That in the discharge of this part of his duty as receiver, under the authority and consent of the court and the solicitors for the parties, personal inspection throughout the house, excepting the basement floor, was made by this receiver and the condition of the building from time to time examined.

That in determining upon the actual repairs necessary for placing the premises in tenantable condition this receiver conferred with Mr. Robert I. Fleming, the builder, and C. G. Ball, the furnace dealer, as to the heating apparatus, and has endeavored to limit the expense & cost of repairs made to what was absolutely necessary for the proper conservation of the premises; as to his success in which regard he has his vouchers to submit.

This receiver reports that in his examinations of the building made in October and November, 1882, he found extensive cracks in the plastering of walls and ceilings throughout the house, caused by sett'ing of the walls, which considerably marred the appearance of the interior of the house, and to repair which the receiver ascertained would cost over $1,000 and take considerable time to do.

278 These not being all repairs of absolute necessity to preserve the tenantable condition simply of the premises, this receiver declined to make unless ordered by the court, to which a report was made on 29 day of November, 1882, and an order passed directing certain work only, which was faithfully and well done for the sum fixed by the court.

At this same time, for the information of the court and for the protection of the parties interested, this receiver requested and obtained from R. I. Fleming, W. E. Spalding & Co., and George C. Harkness a written opinion as to the cause of said cracks, & which is filed herewith, Exhibit B, a copy being forwarded by me to the tenants.

The premises considered, this receiver prays that the cause be referred to the auditor, with instructions to state the account of this receiver and to credit him with the outlays made as above recited,

as may be shown by proper vouchers to be proper credits, and with his proper commissions for services & responsibility under this receivership, and that the court may give such order as may be proper as to the investment of the balance in the hands of the receiver, and as in duty bound, &c.

F. P. B. SANDS, *Receiver.*

279 Subscribed and sworn to as being a true and correct report of his receivership, by F. P. B. Sands, in my presence this 8th day of February, 1883.

R. J. MEIGS, *Clerk,*
By M. A. CLANCY,
Ass't Clerk.

Reference to Auditor to State Receiver's Account. Filed Feb. 8, 1883. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

PEPPER *vs.* SHEPHERD *et al.* } In Equity. No. 7803.

Upon motion of receiver and consideration of the report by him filed this 8th day of February, 1883, it is this 8th day of February, 1883, ordered that the said cause be referred to the auditor of the court, with instructions to state the account of the said receiver up to the date of his report and to credit him with the costs of expenditures made by him as recited therein, for which he shall present proper vouchers, and with such allowance as is proper for the services rendered by him and his responsibility as such receiver, and to report the same to the court for such order as it may pass as to the investment of the balance so found in hands of the receiver.

CHAS. P. JAMES, *Justice.*

280 *Filed Feb.* 24, 1883. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia, the 24 day of Feb'y, A. D. 1883.

GEO. S. PEPPER *vs.* ALEX. R. SHEPHERD *et al.* } 7803, Equity.

Now comes the complainant, — Hanna & Johnston, his solicitors, & move the court for and order directing the receiver in this cause to pay out of any moneys now in his hands or which may hereafter come into his hands the taxes & insurance premiums due & in arrears & which may *occur* due on the property mentioned in their proceedings, & further to pay out of such moneys as aforesaid to the complainant or his solicitors of record such amounts as may be

ascertained to be due to the complainant by reason of advances — by him to pay taxes & insurance premiums, & for said further order in the premises as may be deemed proper by the court.

HANNA & JOHNSTON,
Sol's for Compl't.

281 *Filed Feb.* 27, 1883. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
ALEXANDER R. SHEPHERD *et al.* } No. 7803, Equity.

On consideration of the motion of the defendant, Alexander R. Shepherd, filed this day to modify the decree appointing the receiver & granting an injunction it is by the court, this 27th day of February, 1882, ordered that said motion —, and the same is hereby, overruled without prejudice to the renewal of a motion to modify said decree.

CHAS. P. JAMES, *Justice.*

282 *Auditor's Report on Receiver's Account. Filed Mar.* 9, 1883. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
ALEX. R. SHEPHERD *et al.* } No. 7803. Equity Docket 21.

This cause is referred to the auditor to state the account of the receiver to the date of his report, which is the 8th of February, 1883.

After due notice to all the parties I proceed to execute this order of reference and return herewith the vouchers, exhibits, and depositions submitted in proof.

In Schedule A I have stated an account of the said receiver on the following basis:

I have charged him with all the rents derived from this property from and after July 20, 1881. Of this rental that for the period beween the date above mentioned and March, 1882, inclusive, being 8 months, was collected and received by the attorneys for the defendant Shepherd. The order of the court appointing the receiver directed him to collect and receive all the rent of the realty and the furniture since July 20, 1881. The receiver, in pursuance of his authority, called upon the attorneys for said defendant Shepherd to deliver to him the rents so collected by them, but such delivery was not made until the 5th of October, 1882. In the meantime application had been made to the court on behalf
283 of said defendant Shepherd for a modification of the previous order in such manner that the rental of the furniture might

be excluded from its operation. Upon a reference to the auditor and his report an order was passed upon the 11th of September, 1882, establishing the proportion of the said rent belonging to the furniture, and directing the attorneys for the said defendant Shepherd to pay over to the receiver the proportion of rents and monies collected by them on account of the realty, and directing the receiver to pay over to the said Shepherd or his counsel such proportion of the rents as had come or should come into the hands of the said receiver and which was allowed by the auditor as rent for the use of the furniture. The entire rents in the hands of the attorneys of Shepherd amounted to $4,000. Of this amount $1,600 was, under the allowance of the court, rental of the furniture. The receiver at that date had in his hands monies which were also to be treated as rental of the furniture, and which were collected by him, amounting to $1,400. On the 5th of October a settlement was made between the receiver and the said attorneys, in which the latter were charged with the said $4,000 and credited with the said two sums of $1,600 and $1,400. The balance found by said settlement,
284 being $1,000, was paid over by said attorneys to the receiver.

I have stated the account in Schedule A as if the receiver had collected the entire $4,000 above referred to, and as though he had paid to the attorneys of the defendant Shepherd the said two sums of $1,600 and $1,400.

I have also stated an alternative of this account, in which I have charged the receiver with all monies which have actually come into his possession. The result in either mode of accounting is the same as relates to the balance in the hands of the receiver, and the two accounts are stated for the information of the court upon the question of allowance of commissions. I have given the receiver credit for repairs made upon the property, either by consent of the parties or by the order of the court, and for which expenditures vouchers are furnished and filed herewith.

The main controversy in this reference has been over the allowance of commissions to the receiver as compensation for his services, he claiming the usual commissions upon the entire account as stated in the original Schedule A. On the part of the defendant Shepherd it is contended that the receiver should be allowed commissions only on so much of the rental derived from this prop-
285 erty which has come into his hands as proceeds of the realty, and that in any event the receiver can only claim commissions upon the monies which have actually passed through his hands. The basis of allowance upon the theory of the receiver is found in the original schedule, and that upon the latter theory of the attorneys for defendant Shepherd in the alternative schedule. The amount of rents derived from the realty, as established by the orders of the court, is $5,700, or 19 months at $300 per month.

Some proof was introduced on the part of the defendant Shepherd to show the rate of commission charged by real-estate agents of this city for the collection of rents, which, in the case of the two witnesses who were examined, was shown to be 5 per centum. The usual allowance to receivers under appointment by the court in this

jurisdiction for the collection of rents and the care of property has been 10 per cent. unless the estate has been a very large one and the service trifling. The deposition of the receiver, together with his report, show the nature and extent of the services performed by him, including the care and repair of the property, in addition to which there should be taken into consideration the fact of the requirement of a bond and the necessity of petitions and reports to the court or the procurement of the assent of counsel in
286 making repairs.

It is contended by counsel for Shepherd that in the decree appointing the receiver there is but a naked direction to collect and receive the rents, and that as to any other or further duty rendered by him in the care or preservation of the property he is a mere volunteer and not entitled to compensation. Even if the decree should receive the limited construction so claimed for it, the subsequent orders of the court and stipulations or assent of solicitors sufficiently imposed upon the receiver the further duties which he has performed.

In view of these circumstances I think the compensation ought not to be limited to the commission charged by real-estate agents under the influence of competition with each other, the absence of the responsibility of a bond, and of the necessity of application to the court or counsel for instructions or assent, and in the account I have allowed the receiver commissions at the rate of 10 per centum upon so much of the monies received by him as were derived from the rental of the realty.

With regard to the claim for commission on the rental derived from the furniture it appears that in the order passed on Sept. 11, 1882, the receiver was directed to pay over to the defendant
287 Shepherd or his counsel that proportion of the rent which should come into his hands "found by the auditor to be properly allowable as rent for the use of the furniture," and that in pursuance of such direction the receiver has periodically turned over to the said counsel the entire amount of the proportionate rent of the furniture without any deduction. If this portion of the fund is to pay commissions it should be taken from the revenue of the furniture and not from the proceeds of the realty. I have, therefore, in the original schedule stated the receiver's commissions on so much of the furniture rental as actually came into his hands, and in the alternative schedule commissions on so much of the furniture rental as came into — possession prior to Sept. 11, 1882.

In stating this account I have allowed the fee of the auditor for the report filed June 29, 1882, which is still unpaid. I have done this with the consent of the solicitors of all parties.

JAMES G. PAYN, *Auditor.*

March 7, 1883.

288 SCHEDULE A.

Account of F. P. B. Sands, Receiver.

DR.

To amount of rents received to March 1, 1882, collected and received by attorneys for defendants A. R. Shepherd and by them accouted for to the receiver		$4,000 00
rents accruing from March 1, 1882, to February 28, 1883, collected by the receiver		5,500 00
Total rents		$9,500 00

289 CR.

By amount paid and allowed to attorneys of A. R. Shepherd as rental of furniture under the order of the court of September 11, 1882	3,800 00	
C. G. Ball for repairs, vou. 1	21 00	
R. I. Fleming do. " 2	8 50	
J. C. Newton do. " 3	26 90	
Hayward & Hutchinson for repairs, vou. 4	44 67	
C. G. Ball do. " 6	75 00	
R. I. Fleming do. 7	289 00	
R. I. Fleming do. 11	18 00	
commissions on $5,700, being rents collected on account of the reality	570 00	
auditor's fee for audit and report filed June 29, 1882	50 00	
auditor's fee, this account	20 00	
balance of fund, being proceeds of rent of reality in hands of receiver	4,576 43	
Totals	$9,500 00	$9,500 00
Commissions on $2,200 collected by the receiver on account of the furniture and paid over to the attorneys of Alexander R. Shepherd		$220 00

JAMES G. PAYN, *Auditor.*

290 SCHEDULE A.

Alternative Account of F. P. B. Sands, Receiver.

DR.

To amount received from attorneys for A. R. Shepherd per order of the court	$1,000 00
amount collected by receiver from tenants to Feb. 28, 1883	5,500 00
Total	$6,500 00

CR.

By amount of payments to attorneys of A. R. Shepherd under order of the court of Sep. 11, 1882		800 00	
C. G. Ball for repairs, vou. 1		21 00	
R. I. Fleming do. " 2		8 50	
J. C. Newton do. 3		26 90	
Hayward & Hutchinson for repairs, vou. 4		44 67	
C. G. Ball do. 6		75 00	
R. I. Fleming do. " 7		289 50	
R. I. Fleming do. 11		18 00	
commissions on $5,700, being rents collected on account of the realty		570 00	
auditor's fee for audit and report filed June 29, 1882		50 00	
By auditor's fee, this account		20 00	
291 balance of fund, being proceeds of rent of realty in hands of receiver		4,576 43	
Totals		$6,500 00	$6,500 00

Commissions on collections by receiver on account of furniture from M'ch, 1882, to Sept., 1882, inclusive, $1,400 ..... $140 00

JAMES G. PAYN, *Auditor.*

TUESDAY, *February* 27, 1883.

Hearing pursuant to notice.

Present: Messrs. Hanna & Johnston, for plaintiff; Messrs. Bradley and Mattingly, for defendant Shepherd; Mr. F. P. B. Sands, receiver.

FRANCIS P. B. SANDS sworn.

Examined by Mr. MATTINGLY:

Q. On the 15th of October, 1882, on the settlement between Mattingly and Bradley, attorneys-in-fact for Shepherd, and yourself, as receiver, of the respective amounts payable by you to them and by them to you, they paid over to you, in fact, the sum of $1,000, did they not?

A. In cash; yes. The account shows the transaction.

292 Q. They having then $2,400 payable to you and you $1,400 payable to them?

A. Under the order of the court; yes.

Q. Was this rent paid regularly every month, and how?

A. It is paid now generally in cash; sometimes by check; sometimes in gold, and sometimes in greenbacks. I have not had a check for some time; greenbacks and gold lately. They pay it into my hands at the legation when I call for it. I have not my bank

book with me now, which shows the dates on which I received it from them; but always from the 1st to the 8th or 10th of the month. I got it whenever I called for it.

Q. When did they cease regularly paying by check?

A. I cannot recollect. I have gotten 11 payments in all. It has been indifferently, by cash or by check, as they had it on the premises, I suppose. If they did not have the cash on hand they would give me a check, I suppose.

Q. Since you have been collecting the rent have you always made it a practice to call for it?

A. Always, as they never have done or offered to do to me as I understood from Mr. Bradley they did to him—sent it to him. They have never sent it to me. I have always had to call for it and in the business hours of the day.

Q. Did you ever request them to send a check for it?

293 A. I never requested them to send me a check except once, when I was unavoidably absent from the city on the 1st of the month, and I made arrangements with them to do it. The receipt was left at Riggs' Bank, and they, at my request, made a deposit to my credit and took up my receipt from the bank.

Q. Since this settlement of October, 1882, you have paid over to Mattingly and Bradley, as attorneys-in-fact for Shepherd, $200 per month, have you not?

A. $200 every month, as the order of the court of Sept. 11, 1882, required me to do.

Q. The rent is payable in advance?

A. Yes, sir; so I was informed by Mr. Bradley, and so I have collected since. I would state that after I was appointed receiver the first month's rent, for March, was not collected by me, as Mr. Bradley received it himself after I had been appointed, and it was accounted for in the $4,000 that he accounted for to me afterwards, on the 5th of October, 1882.

Q. Did you request them not to send you a check, but state that you would call for it?

A. Never. I called upon them with the certified copy of my appointment as receiver, and, in the presence of Mr. Bartlett, I think, and Mr. Choo Chi Yung, we discussed what that paper meant

294 and how far it would go, and they recognized the appointment and stated that — would thereafter pay me when I called for it, and I called for it. No request was made of them to pay me by check and no offer was made to do it.

Counsel for Mr. Shepherd refer to the stipulation of the parties and the order of the court passed Sept. 11, 1882.

Adjourned to Friday, March 2, at 3 o'clock p. m.

FRIDAY, *March 2nd*, 1883.

Hearing pursuant to notice.

Present: Mr. Bradley, Mr. Sands, Mr. William J. Miller, for the receiver.

THOMAS E. WAGGAMAN sworn.

Examined by Mr. BRADLEY:

I am a real estate broker and auctioneer; have been engaged in that business 17 years.

Q. Is the collection of rents of real estate in this city and the care of property part of your business?

A. It is.

Q. How long has it been so?

A. 17 years.

Q. Please state what is, if you know, the custom among real-estate men as to commissions for the collection of rents and care of property.

295 Objected to by Mr. Miller.

A. I can answer for myself, but not for the other brokers. My commissions are 5 per cent. over $10, 10 per cent. under; and I pay the taxes and insurance without extra charge when persons wish it, they furnishing the money.

Answer objected to.

Q. Is this your regular commission when you have the care of property of non-residents?

Objected to.

A. It is.

Q. What does this commission of 5 per cent. cover ordinarily?

Objected to.

A. The collection of rent and paying insurance and taxes when persons desire it, they furnishing the money.

Q. Anything else?

A. If anything—any little thing in the way of repairs—was wanted, we might go and look at it, but anything special we make an extra charge for it.

Cross-examination by Mr. MILLER:

296 Q. If you, as an agent, had to examine the property from top to bottom of it and call in mechanics to give you an estimate of the cost of putting it in repair and make a report thereof to the court, and then attend to the repairs, would you charge extra commissions?

A. I generally leave those matters to the auditor in cases where I am receiver.

Q. In your business as agent, if you have to examine the property and call in men to give you an estimate of repairs and then have the repairs done, do you charge an extra commission?

A. I never charge anything extra for that.

Q. Nor for making the contracts?

A. No, sir.

It is admitted that B. H. Warner, who was summoned as a witness at this hearing, would, if present and sworn, testify to similar facts as the last witness, Thomas E. Waggaman.

Mr. Warner appeared at the auditor's office after the hearing and made oath that the facts stated by the witness Waggaman are substantially the same as those to which he would testify.

Cause submitted.

297 Filed Mar. 9, 1883. R. J. Meigs, clerk.

PEPPER *vs.* SHEPHERD. } Eq., 7803.

Before Auditor. Receiver's Ac.

D'R COL.: In behalf of def't Shepherd & his trustees upon the question of receiver's compensation, I submit—

1st. That the receiver's functions under the decree appointing him relate solely to the collection of the rent. He is neither required nor authorized by the decree to superintend the property or to perform any duty upon or in connection with it, & if he has assumed to act in any other relation to it than a mere collector of rents his services were purely voluntary and his compensation should not be enhanced thereby.

2d. The rent is payable in advance and has been paid promptly whenever called for by the rec'r. Its collection by him has been attended with no difficulty, and his compensation should be fixed at the lowest rates for such services. For such services, even where more labor is involved, a real-estate agent'- *ordering* compensation is 5 % (see Waggaman's test'm'y). See High on Rec'rs, 784, & same section referring to such rule applied, giving same commissions as upon trustees' sales; see also High, sec. 781, 782, & cases,
298 especially Day's Craft, 2 Beas., 488, where rule — stated to be 5 % or under, depending upon labor involved.

2 Dan'l Ch. Pr., chap. 23, sec. 4, ¶1434, 3d Am. ed.

3d. The rents of furniture are not involved in the litigation. They were merely included in the original order because the rent was in bulk and unapportioned. By the order ratifying the auditor's report upon the apportionment, based upon the stipulation in the cause, the bulk of rent was for the first time separated and apportioned, and the original order of Dec. 1, 1-81, was so modified that altho' thereafter the receiver should actually collect the entire rent he should hold in his hands & actually collect *qua* receiver the sum of $300 per month, the balance of $200 per mo. he is ordered to pay over as not involved in the suit. This sum he is ordered to pay over intact without deduction for allowances of any kind, and *and* justly, too, for there exists no reason why this furniture or its avails should in anywise contribute to the expense of the litigation. This the receiver has done ever since October, 1882, having made

four payments of $200 each, which is all the money actually received by him as rent of furniture and actually paid over. These last four collections involved no additional labor by reason of the collections of the $200 with the $300, & for
299 this reason, in addition to the others, he should receive no commission upon the $200 per month. Prior to the order ratifying the Andre report the rent had not been apportioned and the rec'r had only collected so much rent. By this order the att'ys of Shepherd are required to pay over to him so much of rent in their hands collected by them as is ascertained to be rent of the real estate which the rec'r is authorized to hold. They had in their hands $4,000, of which $3,400 would be due & payable to the rec'r under the order of court, were it not for the fact that under the same order the rec'r owes them $1,400. They have a settlement with the rec'r and pay him the difference, $1,000, which is all that the receiver actually received of that $4,000, and that sum was rent of the real estate. A receiver's commission is based upon money actually passing thro' his hands. If he compromised with a creditor or had a settlement of accounts with a creditor in a case involving collections of that kind, the only amount upon which he would be entitled to comm'n would be the amount paid into his hands. If this rec'r is paid a comm'n upon any sum as rec'd prior to and in consequence of this settlement, it will be solely upon the sum of $4,500—$3,500 collected by him from the tenant and $1,000
300 paid to him by def'ts' attorneys—all of which was & is in his hands rent of the real estate. If a commission is allowed upon the basis of any larger amount he will certainly be allowed double commissions to that extent.

But we submit, as before, that he is entitled to nothing on the rent of furniture, & if allowed anything it can only be upon the four payments of $200 E. to def'ts' att'ys which were actually collected & turned over by him.

A. C. BRADLEY, *For Self, &*
MATTINGLY, *Sol'rs — Def't-.*

Col. Jas. G. Payne, aud'r.

Carusi, Miller & Sands, attorneys & counsellors at law.

WASHINGTON, D. C., *Nov.* 1, 1882.

Received from F. P. B. Sands, receiver in equity cause 7803, wherein Pepper *et al.* are complainants and Shepherd *et al.* are defendants, the sum of two hundred ($200) dollars in full of proportion of rent payable on ac. of furniture in premises No. 1705 K St. N. W., *nd* this city (pursuant to decree of court on 11th Sept., 1882, ratifying report of Auditor Payne), for month of November, 1882.

WM. F. MATTINGLY,
A. C. BRADLEY,
Attorneys for Shepherd.

301 Charles G. Ball.

WASHINGTON, D. C., *July* 18, 1882.

F. P. B. Sands, Esq..

SIR: I agree to furnish all necessary castings, linings, clean out and put in complete order the cooking range in house 1705 K St. N. W. for the sum of twenty-one (21) dollars.

Very respectfully yours, &c., CHAS. G. BALL.
HALL.

We consent to the making of the above necessary repairs, and that the receiver shall pay therefor from the funds in his hands (in eq. cause No. 7803), and that he be allowed credit therefor in stating his accounts.

WM. F. MATTINGLY, *Sol'r.*
HANNA & JOHNSTON, *Sol's.*

WASHINGTON, D. C., *July* 31, 1882.

Mr. F. P. B. Sands, receiver of house 1705 K St., — Charles G. Ball.

July 29. To furnishing castings, linings, cleaning out and repa-ring range as per agreement ---------- $21 00

Received payment, CHAS. G. BALL.
HALL.

Aug. 4, 1882.

302 WASHINGTON, D. C., *Octo. 6th*, 1882.

Mr. F. P. B. Sands, receiver, to Robert I. Fleming, builder.

1882.

July 15. To repa-ring, plastering, and furnishing one glass globe and holder at residence of the Chinese legation, No. 1705 K St. N. W. ---------- $8 50

Received payment, ROBERT I. FLEMING.

(With thanks.)

WASHINGTON, D. C., *Oct.* 27, 1882.

Chinese legation to J. C. Newton.

Sep. 18. To reglazing & painting skylights upon roof outside, stop-ing up the — on 2 windows over back building, roof, and cleaning skylights on the inside, as per time & color:

"	" 32 pounds mixed paint @ 20c. per pound ----	6 40
	" 64 pounds putty @ 5c. per lbs. ----------	3 20
	" 1 q't linseed oil ----------	20
	" 2 days' eight and half hours' labor for 2 men @ $3.00 per day ----------	17 10
		$26 90

Receive- payment from F. P. B. Sands, receiver,
J. W. NEWTON,
Per J. W. NEWTON.

Nov. 3, 1882.

303 WASHINGTON, D. C., *Oct.*, 1882.

Bill to Mr. Bradley.

Chinese legation to Hayward & Hutchinson, Dr.

1881.				
Dec. 13.	To 2–1¼ Chapman, value		$6 00	
	1 thimble		50	
	1 nipple, 25; plaster of paris, 15		40	
	2 lb of solder, 50		50	
	2¾ days' plumber & h., 5.50		15 12	
				22 52
14.	2 bbls. morter, $3.00; 1 day laborer, $2.00		5 00	
	1½ days' bricklayer & h.		8 25	
	1½" long seven		90	
	1½ ell, 35; 1 fitting, 35		70	
	4½ ft. of 1½" pipe		1 80	
	1 day plumber & h.		5 50	
				22 15
	Payment			44 67

Received from F. P. B. Sands, receiver.

HAYWARD & HUTCHINSON.

WASHINGTON, D. C., *November* 21, 1882.

Mr. F. P. B. Sands, receiver for house 1705 K St., to Charles G. Ball, Dr.

Nov. 13. To furnishing material and repairing boiler, as p'r estimate $75 00

Received payment,

CHARLES G. BALL,
HALL.

Nov. 22, '82.

304 WASHINGTON, *Dec.* 30*th*, 1882.

Mr. F. P. B. Sands to Robert I. Fleming, builder, Dr.

1882.		
Dec. 26.	To am't as per proposal to make repairs, &c., to house cor. Conn. Ave. and K streets, now occupied by Chinese legation	$289 50

Rece'd payment,

ROBERT I. FLEMING.

Carusi, Miller & Sands, attorneys and counsellors at law.

WASHINGTON, D. C., *Dec.* 2*d*, 1882.

Received from F. P. B. Sands, receiver in equity cause 7803, wherein Pepper *et al.* are complainants & Shepherd *et al.* are defendants, the sum of two hundred ($200.00) dollars in full of propor-

tion of rent payable on ac. of furniture on premises No. 1705 K St. N. W., in this city, pursuant to decree of court on 11 Sep., 1882, ratifying report of Auditor Payne, for month of December, 1882.

WM. F. MATTINGLY &
A. C. BRADLEY,
Att'ys for Shepherd.

305 Received this 6th January, 1883, from F. P. B. Sands, receiver in Pepper *vs.* Shepherd *et al.*, No. 7803, eq., the sum of two hundred dollars in full of proportion of rent allot-ed pursuant to the order of court Sep. 11, 1882, as above mentioned.

W. F. MATTINGLY,
A. C. BRADLEY,
Att'ys for Shepherd.

Rec'd this 8th February, 1883,— F. P. B. Sands, receiver in eq. cause No. 7803, the sum of two hundred ($200) dollars in full of proportion of rent payable to us for current month under order of the court of 11 Sept., 1882.

W. F. MATTINGLY,
A. C. BRADLEY,
Att'ys for Shepherd.

CHINESE LEGATION,
WASHINGTON, *Jan.* 13, 1883.

DEAR SIR: The roof on the legation building is looking badly and the minister desires it to be attended to immediately.

Respectfully, D. W. BARTLETT, *Am. Sec.*

Mr. F. B. Sands.

306 We consent that Mr. Sands may have the leak stopped and that he may pay the proper expense of the same out of funds in his hands.

Jan'y 13, '83.

W. F. MATTINGLY &
A. C. BRADLEY,
Att'ys for Shepherd.
HANNA & JOHNSTON,
For Pepper.

WASHINGTON, D. C., *Feb'y 10th*, 1883.

Mr. F. P. B. Sands, receiver, to Robert I. Fleming, Dr., builder.

1883.
Feb'y 10. To repairing leaks in roof of house cor. Conn. Ave. and "K" street, occupied by "Chinese legation," per bill of Wm. O'Donnell, hereto attached--- $18 00

Rec'd payment, ROBERT I. FLEMING.

WASHINGTON, D. C., *January* 27, '83.

Mr. R. I. Fleming to Wm. O'Donnell, Dr.

Repairing roof of Chinese legation $18 00

Received payment, WM. O'DONNELL.

307 *Exceptions to Auditor's Report. Filed Mar.* 20, 1883. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
ALEXAND'R R. SHEPHERD *et al.* } No. 7803. Equity.

The defendant, Alexander R. Shepherd, excepts to the report of the auditor filed in this cause March 9, 1883, upon the following grounds:

1. That the auditor erred in allowing any commission to the receiver out of the funds in his hands at this time.

2. That the auditor erred in allowing the receiver a commission of ten per cent. upon the rent of the realty under the easy circumstances attending the collection.

3. That the auditor errs in Schedules A & B in the allowance of any commission upon the rent of the furniture.

4. That the auditor errs in both of said schedules in the allowance of a commission upon $1,400, rent of the furniture, for the reason that the same sum of $1,400 forms a part of the $5,700 upon which he allows the receiver a commission as rent of the realty.

5. That the auditor errs in said schedules in allowing to the receiver a commission of ten per cent. upon rent of furniture.

A. C. BRADLEY,
WM. F. MATTINGLY,
Sol'rs for Shepherd.

308 *Stipulation to Withdraw Exceptions. Filed Apr.* 4, 1883. *R. J. Meigs, Clerk.*

In the Supreme Court of the Dis. of Col.

GEORGE S. PEPPER
vs.
ALEX. R. SHEPHERD *et al.* } No. 7803. Equity.

It is this 3d day of April, A. D. 1883, hereby stipulated that said Shepherd shall withdraw his exceptions to the auditor's report on the receiver's account and consent to the satisfaction thereof, except as to the allowance of commission on rent of furniture.

The receiver hereby waives all rights to commission on rents of furniture for the past and future, and is to pay over the rents received therefrom to said Shepherd's attorneys monthly as collected.

WM. F. MATTINGLY,
A. C. BRADLEY,
Sol'rs for Shepherd.
F. P. B. SANDS, *Receiver.*

Exceptions Withdrawn. Filed Apr. 4, 1883. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
ALEXANDER R. SHEPHERD *et al.* } No. 7803. Equity.

In accordance with the stipulation this day filed in this cause, the defendant, Alexander R. Shepherd, hereby withdraws his
309 exception to the auditor's report upon the receiver's account and consents to the ratification of the same, except as to allowance of commission on rent of the furniture, which has been waived by the receiver.

A. C. BRADLEY,
WM. F. MATTINGLY,
Sol'rs for Def't Shepherd.

Exceptions to Auditor's Report by Compl't. Filed Apr. 6, 1883. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
ALEXANDER R. SHEPHERD *et al.* } No. 7803. Equity.

The complainant, by his counsel, hereby excepts to the auditor's report filed herein on the 9th day of March, A. D. 1883, for that the auditor erred in charging the amount of his fees for said report amounting to $20.00, and for his report filed June 29th, 1882, amounting to $50, exclusively against the part of the rent received for the use of the real estate, which fees this complainant says should be apportioned as against the rent for the real estate and the rent for the furniture therein respectively.

HANNA & JOHNSTON,
Sol'rs for Compl't.

310 *Answer of D. L. Bartlett. Filed Apr.* 30, 1883. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
ALEXANDER R. SHEPHERD *et al.* } No. 7803. Equity.

The seperate answer of David L. Bartlett, one of the defendants to the bill of complaint of the above-named plaintiff.

In answer to the said bill this defendant says as follows:

1. He admits the allegations of the first paragraph of said bill

except as to this defendant, who does not reside in the District of Columbia, but who resides in the city of Baltimore, State of Maryland, and as to the defendants, Alexander R. Shepherd and Mary G. Shepherd, who, he is informed and believes, resides only temporarily in Mexico and intend to return to the District of Columbia.

2, 3, 4. Upon information and belief he admits the allegations of the 2nd, 3rd, and 4th paragraphs.

5. He is informed and believes that the plaintiff owes and holds the promissory notes for $35,000 and $10,000 as he claims in paragraph 5, and that defendant, Mercy M. C. Gray, owns and holds the other said note for $35,000, and that said notes are all overdue and unpaid, but he does not know what amount of interest is due
311 upon said notes or what amount has been paid by complainant for taxes and insurance, and he does not admit the allegations relating thereto and calls for strict proof thereof. He denies that the statement marked Exhibit G. S. P., No. 1, filed with the bill, is a correct or just account of said interest, insurance, and taxes, or that the said amount is secured by the said deeds of trust, and he avers that the said statement shows that the plaintiff has compounded the interest upon said notes and charged interest upon taxes and insurance claimed to have been paid by him at the rate of 9 per centum per annum, and that the aggregate amount is thus wrongfully increased $4,582.00.

6. He admits the allegations of said 6th paragraph of the bill, and says that the said defendants not only undertook to, but did actually, convey the said lot.

6½. He is informed and believes that the most of the parties secured by said deed of trust have been paid and satisfied, and that the number of those holding unsettled and unsatisfied claims is comparatively small, and he avers that both George M. Barker and John Alexander have been paid and satisfied in full, and that they have no interest in the subject of said trust.

312 7, 8. He admits the allegations of the 7th & 8th paragraphs.

9. He admits that the complainant filed a bill in this court, being cause No. 6201, equity, but he denies that the substance of said bill is correctly stated by the complainant, and he refers to said bill and makes the same a part of this answer, and says that in the 10th paragraph of said bill this complainant alleged that "he did in writing order the trustees under said deeds of trust to (secure him) *to* advertise said real estate for sale, but that said defendant, Andrew C. Bradley, one of the trustees under both of said deeds of trust, refused so to do;" and that by said bill he prayed "that a trustee be by the order of this honorable court appointed in place and stead of the trustees under said deeds of trust first mentioned, with directions and authority to forthwith execute all the trusts reposed in them respectively by the said deeds of trust;" and he also prayed for such other and further relief as the circumstances of the case might require. And this defendant says that the said bill was and is a bill to foreclose the said deeds of trust by the order and direction of this court,

and through its officer or officers. He admits that the decree
313 recited was subsequently passed in the cause; that an appeal was taken therefrom to the court in general term; that the property was advertised as alleged, and that a petition was filed by said Shepherd to enjoin said sale, and that the prayer of said petition was denied; and he says that he is informed and believes, and therefore alleges, that the said petition was denied solely on the ground that, an appeal having been taken to the court in general term, the special term was without jurisdiction to entertain said petition.

10. He admits, on information and belief, that said property was sold by said Johnston and Philip as alleged in paragraph 10 of said bill, and that defendant Shepherd subsequently filed his bill in cause No: 7052, equity (having first dismissed his appeal in cause No. 6201), to set aside said sale, and that the defendant Pepper (the complainant in this cause) filed these in answer and a cross-bill, and a decree was rendered dismissing said bill, and an opinion subsequently filed in said cause, a copy of which is Complainant's Exhibit G. S. P. No. 2; but he is advised, and therefore denies, that the court dismissed said bill for want of jurisdiction, and he refers to said bill, answer, and cross-bill as part of this answer, and
314 says that by said cross-bill the complainant Pepper prayed for injunction and receiver, and his right to such relief was adjudicated in said cause.

11. He admits that the opinion referred to was by the court in general term ordered to be stricken from the files as no part of the record, and denies that there was any other adjudication in said cause than the decree dismissing the bill of complaint, and thereby carr-ing with it the cross-bill.

12, 13, 14, 14½. He has no personal knowledge of the matters and things alleged and charged in paragraph- 12, 13, 14, 14½, and does not admit the same to be true, but calls for strict proof thereof; and he says that in complainant's bill in cause No. 6201 complainant Pepper alleged in relation to the cutting off of a portion of the improvements by the description of the property in his deeds of trust to the contrary of "seriously impairing complainant's security, making the same grossly inadequate, and causing him irreparable injury," as he alleges in paragraph 13 of this bill; that this portion of the improvements "could be detached without marring or in anywise lessening the value of said property," and claimed the right to sell the portion covered by his deeds of trust.

314½ 15. He is informed and believes that no part of the principal debt due complainant has been paid, and he therefore admits it; and he also admits that no part of the principal has been paid Mercy M. C. Gray, but he does not know what amount of unpaid interest, insurance, and taxes is properly due and payable by the defendant Shepherd, and he calls for proof thereof. He denies that there is danger of title paramount and hostile to the parties to this cause being acquired by strangers through tax sale, and, upon information and belief, avers that but for this bill and the restraining order issued thereon all unpaid taxes would have been settled and

paid by said Shepherd; and he also avers, upon information and belief, that said Pepper intimated for the first time, when he filed this bill and procured said restraining order, that there was any doubt as to his having a good, legal title to the property purchased by him at said sale. He admits that for one year ending in the spring of 1880 the defendant Shepherd received rent for said house and the very expensive and elegant furniture therein contained the sum of $6,000, and that said house and furniture have
315 been rented to the Chinese embassy at the same rate since November 1st, 1880, but he denies that it has been otherwise rented at all, and he denies that complainant has any right or claim to said rents.

16. He denies that the existing incumbrance- upon said property amount to $12,000, and that they are increasing at the rate of $9,000, and he avers that the said property is adequate security for the payment of complainant- legitimate claim, and that the same is worth from $85,000 to $100,000. Upon information and belief he denies that said Shepherd is insolvent and that his unsecured debts amount to $310,000, and he avers that in a short space of time said Shepherd will pay all of his debts, as he has now paid the great bulk of them; and he believes that said Shepherd is not only willing to pay but that he will do so.

17. He knows nothing of the averments of paragraph 17, and does not admit them.

18. He does not know as to the matters contained in paragraph 18, and if the same are material he calls for proof.

And, further answering, he says that under and by the said deeds of trust the complainant has no right to the rents of said
316 house, or so much thereof as is embraced in his deeds of trust, and much less has he any right to the rent of the furniture contained in said house, nor has he the right to the possession of said house or land or premises, nor have the trustees under said deeds any right to the possession of said property, nor has the complainant any interest in said land and premises or any right under said deeds except to have said land and premises sold, if he has any right thereunder, and to have his claims paid out of the proceeds of such sale.

And, further answering, he says that the whole subject-matter of this bill as against the defendant Shepherd is embraced in the said cause No. 6201, equity, which is still pending, and if the complainant is entitled to any relief by reason of the various matters set up in this bill he must seek such relief in said cause No. 6201, equity, by bill of review or otherwise, and he claims the same benefit of the said objection to this bill as if he had specially pleaded the same in bar.

And having fully answered, &c.

DAVID S. BARTLETT.

WM. F. MATTINGLY,
A. C. BRADLEY,
Solicitors for Def't.

David L. Bartlett says on his oath that he has heard read
317 the above answer by him signed, and knows the contents thereof, and that the facts therein stated of his own knowledge are true, and those stated upon information received from others he believes to be true.

DAVID S. BARTLETT.

Sworn and subscribed before me this 19th day of April, 1883.

PH. H. HOFFMAN,
Commissioner for District of Columbia in Maryland,
Residing in Baltimore City,
Appointed by the President of the United States.

Filed May 2, 1883. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
A. R. SHEPHERD *et al.* } 7803, Equity.

The clerk will enter the bill in this cause dismissed as to the defendant, John Alexander.

HANNA & JOHNSTON,
Solicitors for Complainant.

318 *Answer of Bartlett to Amended Bill. Filed Apr.* 30, 1883. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

GEO. S. PEPPER
vs.
ALEXANDER R. SHEPHERD *et al.* } No. 7803, Equity.

The seperate answer of David L. Bartlett to the amended bill of complainant of the above-named plaintiff.

This defendant, for answer to said amended bill or so much thereof as he is advised it is material for him to make answer unto, says:

1. To the amendment to the first paragraph of the 16th section of the original bill he says that he denies that said lot, No. 3, in square No. 164, with the improvements thereon, is a wholly insufficient security for the debt due the plaintiff; and, to the contrary, he avers as in his answer to said paragraph of the original bill *as* he has heretofore averred.

2. He does not know, but he presumes, that the children of William H. Philip are properly named in this paragraph of the amended bill.

3. That the proposed offer in this paragraph of the amended bill

is no waiver or surrender of any right or interest, and that
319 the plaintiff, under the circumstances, is entitled to no relief, and he prays the same advantage of this objection as if he had specially demurred to the bill on that ground.

And, having fully answered, etc.

DAVID S. BARTLETT.

WM. F. MATTINGLY,
A. C. BRADLEY,
Sol'rs for Def't.

David L. Bartlett, being duly sworn, says that he has read the above answer by him signed and knows the contents thereof, and that the facts therein stated upon information received from others he believes to be true.

DAVID S. BARTLETT.

Subscribed and sworn to before me this nineteenth day of April, in the year 1883.

PH. H. HOFFMAN,
Commissioner for District of Columbia in Maryland,
Residing in Baltimore City,
Appointed by the President of the United States.

Replication. Filed May 2, 1883. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
ALEXANDER R. SHEPHERD *et al.* } 7803, Equity.

The complainant hereby joins issue with the defendants
320 on their answers filed to the bill and the amended bill in the above-entitled cause.

HANNA & JOHNSTON,
Of Counsel for Complainant.

May 2, 1883.

Decree Pro Confesso vs. Mary G. Shepherd Made Absolute. Filed May 2, 1883. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
A. R. SHEPHERD *et al.* } 7803, Equity.

It appearing to the court that an order of publication against the defendant, Mary G. Shepherd, was passed by the court on the 12th day of September, 1882, and that after due publication of said order a decree *pro confesso* was passed against said defendant on the 27th

day of December, 1882, it is, this second day of May, 1883, on motion of counsel for complainant, ordered that the said decree *pro confesso* be, and the same hereby is, made absolute.

CHAS. P. JAMES, *Justice.*

321 *Plea of W. F. Mattingly to Stand as Answer. Filed May* 2, 1883. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
ALEXANDER R. SHEPHERD *et al.* } In Equity. No. 7803.

By consent of counsel for complainant and the defendant, William F. Mattingly, it is by the court, this 2d day of May, 1883, ordered that the plea to the original and amended bills filed herein by said Mattingly in December 1, 1882, stand as and for the answer of said Mattingly to the said original and amended bill.

CHAS. P. JAMES, *Justice.*

We consent.
HANNA & JOHNSTON,
Sol'rs for Compl't.
WM. F. MATTINGLY,
Justice, D'f't.

Petition of Receiver for Repairs. Filed May 4, 1883. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

PEPPER
vs.
SHEPHERD *et al.* } In Equity. No. 7803.

To the honorable the justice of the supreme court of the District of Columbia, holding a special term for equity business:

322 Your petitioner, the receiver in the above-entitled cause, respectfully shows that prior to and since the filing of his last report to the court and for a long time before certain of the hangings, furniture, and fixtures in and upon the premises No. 1705 K street N. W., in this city, has been and is still in very bad condition, the tenants in possession, the Chinese legation, having frequently made complaint to this receiver and asked for some correction therein.

Since the order passed by the court on the 11th day of September, 1882, there was an apportionment of the rent between the realty and the furniture, and, as these complaints had reference to the furniture and the replacing and repairing thereof, is properly chargeable upon the fund payed on account of the furniture to Messrs. A. C. Bradley and Wm. F. Mattingly, trustees, and attorneys of A. R. Shepherd. This receiver has not himself taken charge of said repairs, having no funds in his hands except such as were apportioned to the realty.

This receiver respectfully shows that said complaints have been made known by him to Mr. A. C. Bradley, with urgent request that he attend thereto, which this receiver was assured by said Bradley as far back as October, 1882, and almost monthly since on repetition of the complaints, that it would be attended to, but the same was not done.

323 That the said complaints related to the condition of the window shades on the front and side of the house, which are very much delapidated and should have been replaced many months since, a number of them being in a disgraceful condition. Within the last three months one of the chandeliers in the second floor, becoming loosened, has fallen, and the fact was communicated to this receiver, who made the same known to Messrs. Bradley and Mattingly, and the former assured the receiver that he would attend thereto.

This receiver respectfully shows to the court that he is informed and believes that no attention has been given to the complaints made as recited, which were communicated, as mentioned above, to Mr. A. C. Bradley, except as to the window shades, some of which *have* been removed prior to 3d May, 1883; that in consequence of such neglect a notification has been sent to the receiver that unless the complaints are attended to the Chinese minister will vacate the premises; and since such abandonment of the premises would manifestly be injurious to the parties in interest, this receiver deems it incumbent upon him to report to the court the fact of the notice he has received, which he offered thereto, and prays to have the same read as a part of this petition;

324 and since the repairs are such as the landlord should make under the lease, this receiver respectfully asks the instructions of the court as to whether he shall or not forthwith make said repairs as receiver and replace such curtains as may be required and to charge the expense thereof upon the proportion of the rent set aside under the order of the court passed on the 11th day of September, 1882, and directed to be paid to the said A. C. Bradley and Wm. F. Mattingly by this receiver, and in case the court should not authorize this receiver to make said repairs this receiver respectfully asks instructions from the court as to what steps he shall take to satisfy the complaint of the tenant, so as to secure his remaining upon the premises as tenant, and for such instructions in the premises as the court may deem it proper to give.

F. P. B. SANDS, *Receiver.*

Subscribed and sworn to before me this 14th day — April, A. D. —.
CHARLES C. KELLOFF,
To *Equity Clerk, Wayne Circuit Court.*

Sworn to before me, with amendment at foot of second page, "except & to 3d May, 1883," this 4th day of May, 1883.

R. J. MEIGS, *Clerk,*
By M. A. CLANCY, *Ass't Clerk.*

CHINESE LEGATION, WASHINGTON, *Apr.* 11, 1883.

Mr. Sands:

DEAR SIR: I have called twice at your office to see you in reference to the condition of the legation. Some new window
325 shades are needed very much, and a chandelier has fallen upstairs, through no fault of ours. We have complained to you several times and you have not done anything. The condition of the shades in the office is simply disgraceful. I try once more to see if I can get something done, and if this should fail I shall advise the minister to secure other quarters, which he is disposed to do.

Respectfully yours, D. W. BARTLETT,
American Secretary.

EXHIBIT A.

HEALTH DEPARTMENT, DISTRICT OF COLUMBIA,
WASHINGTON, *Aug.* 28, 1883.

F. P. B. Sands:

DEAR SIR: I hereby offer to rent the premises No. 1705 K St. for the term of one year with the privelege of three years thereafter, lease to commence on the 1st day of December, 1883, for the sum of six thousand dollars per annum, payable monthly at the end of each and every month, at the rate of five hundred dollars per month. I ask for the leave to commence on the 1st of Dec'r for the reason that it will be absolutely necessary for me to spend not less than
326 one thousand dollars on the house and furniture to put it in a condition suitable for my purpose; and it is my intention to keep it in the very best order and condition during my term of lease. I at the same time request that I may have possession of the house on the 1st of October, as in my opinion it will require at least two months to get it in order.

Yours very truly, SAM'L A. ROBINSON.

EXHIBIT B.

WASHINGTON, D. C., *Sept.* 12, 1883.

F. P. B. Sands, Esq., attorney-at-law, Washington, D. C.

DEAR SIR: I have the honour to offer you hereby for the house No. 1705 K street N. W., in Washington, D. C., $6,000 (six thousand) per annum by lease for one year from October 1st, 1883, with right of renewal at the same rate twice.

The owner of the house will allow me $500 for such repairs as I deem necessary to be made in the house, upon the house &
327 furniture, and a new boiler having to be put — by the owner before October 1st, 1883.

I am, dear sir, yours respectfully,

C. STRUVE.

Filed Sep. 12, 1883. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

PEPPER *vs.* SHEPHERD *et al.* } In Equity. No. 7803.

The receiver in the above-entitled cause respectfully reports that the tenants formerly in possession of the premises No. 1705 K St. northwest, in these proceedings mentioned, pursuant to a written notice served upon this receiver, vacated said premises and surrendered possession thereof to him on the 30th day of June ult'o, the schedule of the furniture annexed to the then existing lease having been duly verified by the representatives and attorneys of the defendant Shepherd. Assuming possession, this receiver, with the approval of the counsel for the parties in interest, employed a watchman to remain in and upon the premises night and day, for which he was to be paid $10 per week, and the receiver also expended the sum of $4.50 for having the house cleansed throughout and the grass cut in front of the house, and has cause- a leak to be stopped which was in the ball-room roof.

328 With the approval of the counsel for the respective parties, this receiver has taken steps to secure another tenant for the premises, and respectfully submits for the consideration of the court two proposals recently made. The first is from Mr. S. A. Robinson, who desires to occupy the premises as a family hotel, and his offer (hereto annexed, Exhibit A) is, in brief, that he will pay $6,000 per annum (payable at the end of each month), to commence December 1st prox'o, for a period of one year, with privilege of renewal, and to expend $1,000 in repairs and alterations.

The second offer is that of M. de Struve (hereto annexed, Exhibit B), the Russian minister, who wishes to occupy the premises as his legation. He offers to rent for one year, with the privilege of renewal, at $6,000 per annum, from 1st October prox'o, the receiver to expend $500 in repairs of house and furniture.

These propositions the receiver submits to the court and asks instructions in regard thereto; and he is authorized by the counsel for plaintiff and defendant to state that they approve of the offer made by the Russian minister and consent to its acceptance, and, if so authorized by the court, this receiver will forthwith prepare

329 and have executed a lease with said M. de Struve pursuant to the terms of his proposal.

These proposals, neither of them include in the repairs called for the replacing of the boiler, which was temporarily patched up last fall, with the understanding that its renewal was a necessity then and the repairs then made only temporary in their character.

The replacing of this boiler had been estimated for and submitted for the consideration of the court at that time, and a more thorough examination has been made by experts and an estimate made to cover the cost of replacing the boiler for the sum of $435, and, with the consent of the counsel for the several parties, this receiver has

contracted for said work at said figure and it is in process of being now replaced.

Respectfully submitted,

F. P. B. SANDS, *Receiver.*

Subscribed & sworn to this 12 day — Sept'r, 1883.

R. J. MEIGS, *Clerk,*
By M. A. CLANCY, *Ass't Clerk.*

330 *Receiver Authorized to Rent House. Filed Sept.* 12, 1883. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

PEPPER
vs.
SHEPHERD *et al.* } No. 7803, Equity.

This cause coming on to be heard upon the report of the receiver, this day filed therein, and the same being duly considered by it — approved, it is by the court, this 12th day of September, A. D. 1883, ordered that F. P. B. Sands, receiver, be, and is hereby, authorized to accept the proposal submitted by M. de Struve to rent the house No. 1705 K street northwest and the furniture therein, and to expend, as may be required by the tenant, in repairs upon the building and the furniture therein a sum of money not exceeding five hundred dollars, $500, for which sum when so expended the said receiver is to be allowed credit in his accounts.

Another said receiver is authorized and empowered to prepare such proper lease as may be necessary in the premises and to execute the same.

CHAS. P. JAMES, *Justice, &c.*

331 *Time to Take Testimony Limited to* 70 *Days. Filed May* 5, 1884. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
ALEXANDER R. SHEPHERD. } No. 7803. Equity Docket 21.

It is, this fifth day of May, A. D. 1884, ordered that the time for taking the testimony of the defendants in the above-entitled cause be, and the same is hereby, limited to seventy days from this date; and it is further ordered that in the event of the complainant desiring to take any testimony in rebuttal of that to be given by the defendant the time for taking such testimony in rebuttal be, and the same is hereby, limited to fifteen days from and after the close of the testimony of the defendant.

W. S. COX, *J.*

We consent.

HANNA & JOHNSTON, *For Comp't.*
W. F. MATTINGLY, *For Def't.*
HENRY WISE GARNETT,
For Def't Gray & Fitch & Davis, Trustees.

332 *Receiver Authorized to Rent House, &c. Filed Jun.* 23, 1884. *R. J. Meigs, Clerk.*

PEPPER
vs.
SHEPHERD *et al.* } In Equity. No. 7803.

This cause coming on to be heard upon the proposal of the Russian minister as to renewal of his present lease, it is by the court, this 23d day of June, A. D. 1884, ordered and decreed that the receiver, F. P. B. Sands, be, and he is hereby, authorized — empowered to accept said proposition, and to renew the present lease for a period of two years from the expiration thereof, at the rate of five thousand ($5,000) dollars per annum.

And it is further ordered that of the rent so provided for herein the said receiver shall pay, as collected by him, to Messrs. Wm. F. Mattingly and A. C. Bradley, attorneys of Alexander R. Shepherd, the same proportion as that provided by previous orders passed in this cause—that is to say, two-fifths of the said rent as the same accrues and is collected.

W. S. COX, *J.*

We consent to the above order.
WM. F. MATTINGLY,
A. C. BRADLEY,
Att'ys for A. R. Shepherd.
HANNA & JOHNSTON,
Att'ys for Comp't.

333 *Order Authorizing Receiver to Rent, Modified. Filed Sep.* 13, 1883. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

PEPPER
vs.
SHEPHERD *et al.* } No. 7803, Eq.

Upon the motion of the solicitors for the defendant, Alexander R. Shepherd, it is ordered by the court, this 13th day of September, 1883, that the order passed herein September 12th, 1883, authorizing the receiver to rent the premises in controversy and the furniture therein contained, be, and the same is hereby, modified by making the power and authority of said receiver to rent the said furniture subject to the assent of the solicitors of said Shepherd, the said furniture not being in the possession or control of said Sands, receiver; and, further, by authorizing and requiring the receiver to pay to the solicitors of said Shepherd two-fifths of the rent collected as and for the rent of said furniture.

CHAS. P. JAMES, *Justice, &c.*

334 *Cause Referred to Chief Justice for Hearing. Filed Oct.* 29, 1884.
R. J. Meigs, Clerk.

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
A. R. SHEPHERD *et al.* } No. 7803, Eq.

The justice now holding the special term in equity of this court, having at one time been of counsel in the above-entitled cause, it is, this 29th day of October, 1884, ordered that this cause be, and the same is hereby, by consent of the solicitors for the respective parties thereto, referred to the chief justice of this court for hearing.

W. S. COX, *J.*

We consent.
HANNA & JOHNSTON,
Sol'rs — Complainant.
WM. F. MATTINGLY,
A. C. BRADLEY,
Sol'rs for Def't Shepherd.
HENRY WISE GARNETT,
Sol'r for Def't Gray.

Petition of Juliana Gideon. Filed Nov. 3, 1884. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

GEO. S. PEPPER
vs.
A. R. SHEPHERD. } In Equity. No. 7803.

The petition of Juliana Gideon respectfully shows that she has obtained against Alexander R. Shepherd a judgment on the
335 law side of your court; that she is informed and believes that the receiver appointed by your honorable court is the above-entitled suit, Mr. F. P. B. Sands, is collecting the rents of the property in these proceedings mentioned, and pays a certain part of the sum to the said A. R. Shepherd. She is advised that she cannot attach the credit in the hands of the receiver without the permission of this court, holding a special term for equity. She has no way at present by *fieri facias* of collecting her judgment. She asks your court to grant permission to levy an attachment or credit in or coming into the receiver's hands; that on her judgment, which is numbered 20680 at law, she has already sued out an attachment.

JULIANA GIDENE,
By W. E. EDMONSTON, *Her Agent.*

Order Authorizing J. Gideon to Attach. Filed Nov. 3, 1884. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

GEO. S. PEPPER
vs.
A. R. SHEPHERD. } In Equity, 7803.

On consideration of the petition of Juliana Gideon in this cause filed, it is, this 3rd day of November, 1884, ordered that the
336 said petitioner may cause an attachment upon the judgment No. 20680 at law to be laid upon the credit in the hands or coming into the hands of F. P. B. Sands, receiver in this court, appointed in the above-entitled suit.

W. S. COX, *J.*

Cause Remanded to the Justice Holding Special Term by Chief Justice. Filed Nov. 15, 1884. *R. J. Meigs, Clerk.*

In the Supreme Court of District of Columbia.

GEORGE S. PEPPER
vs.
A. R. SHEPHERD *et al.* } In Equity. No. 7803.

The above-entitled case having been referred to the chief justice for hearing by consent, and the health and engagements of the chief justice in the court in general term rendering it impossible for him to hear the same, the cause is hereby remanded to the special term of the court in equity and to the judge holding said special term.

By the court:

D. K. CARTTER, *Ch'f Jus.*

Cause Referred to Justice James to Hear. Filed Nov. 21, 1884. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
A. R. SHEPHERD *et al.* } No. 7803, Equity.

337 The chief justice of this court, to whom this cause was, by consent of counsel, referred for hearing by order passed herein on the 29th day of October, 1884, remanded the cause to the judge holding the special term of this court, in equity, by order passed herein on the 15th day of November, 1884.

It is thereupon, this 21st day of November, 1884, by consent of the solicitors for the respective parties to this cause, ordered that the

same be, and it hereby is, referred to Justice James, of this court, for hearing.

W. S. COX, *J.*

We consent.
HANNA & JOHNSTON,
Of Counsel for Complainant.
ENOCH TOTTEN,
WM. F. MATTINGLY,
A. C. BRADLEY,
Solicitors for Def'ts Shepherd, Bradley, Mattingly, Cross, & Bacon.
HENRY WISE GARNETT,
Solicitors for Defendants Gray, Fitch, & Davis.

338 *Cause Refer. to Special Term by Justice James. Filed Feb.* 6, 1885.
R. J. Meigs, Clerk.

In the Supreme Court of the District of Columbia.

PEPPER, Plaintiff,
vs.
SHEPHERD & TOTTEN, Respondents. } In Equity. No. 7803.

This cause having been assigned by order of the equity cause to be heard by Justice James, it is this 8th day of February, 1885, ordered by the Justice James, upon his own motion, that the same be returned and referred, to be heard by the judge now holding the equity court.

CHAS. P. JAMES, *Justice, &c.*

Petition of A. R. Shepherd. Filed Mar. 24, 1885. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

PEPPER
vs.
SHEPHERD *et al.*

To the supreme court of the District of Columbia, holding an equity court for said District:

The petition of Alexander R. Shepherd respectfully shows that the complainant, by his bill in this cause filed July, 1881, states that he files his bill "to the end that said lot 3 of said Shepherd's subdivision may be sold as a whole, in order that
339 an undisputed title to the whole property may be obtained by means of foreclosure proceedings under the order and decree of this court;" and after reciting the various matters set out in his bill affecting the title to said lot 3, he concludes as follows:

"Wherefore, in view of the premises, and inasmuch as complainant is otherwise remediless, he prays as follows," and thereupon he prays specifically for a receiver, for a trustee to sell the whole of lot 3; that the rents and profits be applied to the satisfaction of his

claims, with prayer for process, for general relief, for discover*ing*, and for injunction, and nowhere does he ask for or suggest that he is entitled to a personal decree against this defendant for the deficiency that may arise upon the application of the proceeds of the sale of the real estate to his claims; that rules No. 23 of rules of this court requires that complainant shall pray the specific relief to which he supposes himself entitled; that on the 20th day of May, 1882, the complainant brought suit at law against this defendant upon the said original and comp*ear* interest notes referred to *said* described in the bill of complaint in this cause, and the said action is numbered 23732 on the law dockets of this court and is still pending, as will fully appear upon reference to the records of this court, reference to which is prayed a part of this petition;
340 and relying upon the aspect of the bill stamped upon it by its averments and prayers as simply and solely a bill for the sale of the real estate described, and to apply the rents and profits thereof for the satisfaction of the claim of complainant, and upon the construction given to its scope and purpose by the said suit at law upon said notes, this defendant says that he was led astray as to the real purpose of said bill, if its purpose partly was to seek a personal decree against this defendant, and thereby has prevented this defendant from pleading the statute of limitations against such personal liability, which plea he would have used had the bill prevented such claim of relief, and that he was taken by surprise when, for the first time, at the hearing of this cause, it was suggested that the complainant is entitled to such decree. And the court was asked to so decree.

1. Your petitioner therefore prays that he may be allowed a hearing upon the subject of the right of the complainant to a personal judgment against him on the pleadings in the cause and in view of their condition.

2. That he may be allowed to take proof as to the fact of said pending action at law.

3. That the complainant may be required to elect between
341 the said pending action at law and his claim for a personal decree against this defendant for the deficiency in this cause, and that if he elects to claim such personal decree in this cause that he may be required to amend his bill so as to make it a bill for that purpose, and that defendant may have leave to answer or plead thereto.

4. That he may be allowed a rehearing upon the questions as to the disposition of the funds in the hands of the receiver, and as to interest upon the interest notes.

And for such other relief as to the court may seem proper in the premises.

ALEXANDER R. SHEPHERD,
By W. F. MATTINGLY,
A. C. BRADLEY, *Att'ys-in-Fact.*

ENOCH TOTTEN,
Counsel for Shepherd.

——— ———,
Solicitors for Shepherd.

Andrew C. Bradley, being duly sworn, says that the facts set out in the foregoing petition are true of his own knowledge; that he is an agent of the said petitioner, who is now residing in Mexico, and absent from the United States.

A. C. BRADLEY.

Subscribed and sworn to before me this 24 day of March, 1885.
R. J. MEIGS, *Clerk*,
By L. P. WILLIAMS, *Ass't Clerk.*

342 Ordered, That the written application be, and the same is hereby, overruled.

A. B. HAGNER.

March 26, '85.

Petition of A. R. Shepherd. Filed Mar. 26, 1885. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

PEPPER
vs.
SHEPHERD *et al.* } No. 7803, Equity.

To the supreme court of the District of Columbia, holding an equity court for said District:

The petition of Alexander R. Shepherd respectfully shows that the bill of complaint in this cause, in its stated object and purpose and in its prayers, is distinctively and solely a bill for foreclosure by way of sale of the real estate described therein and incidental thereto for the purpose of perfecting the title to said real estate, and that the suggestion or claim to a personal decree against this defendant was first made at the hearing of this cause and under the prayer for general relief; that the claim then made to this relief was a surprise to this petitioner, inasmuch as the record is free from any such suggestion or claim, and he is advised that when the claim to such personal decree was made at the hearing his personal
343 liability upon the notes described in the bill of complaint was barred by the statute of limitations, said notes being then all of them more than three years overdue, and that he should be allowed to interpose that objection to such personal decree. He therefore prays that he may be allowed to interpose the defence of the statute of limitations to such claim by way of plea or amended answer.

A. C. BRADLEY,
Sol'rs for Pet'r.

Final Decree. Filed Mar. 26, 1885. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
ALEXANDER R. SHEPHERD *et al.* } No. 7803, Equity. Docket 20.

1. This cause coming on to be heard, and having been argued by counsel, the bill, answer, and all other of the proceedings were by the court read and considered, it is therefore this twenty-sixth day of March, 1885, by the supreme court of the District of Columbia, holding a special term in equity and by the authority thereof, adjudged, ordered, and decreed that unless the defendant, Alexander R. Shepherd, on or before the first day of July, 1885, shall pay or bring into this court, to be paid to the complainant, the sum
344 of thirty-five thousand dollars ($35,000) hereby decreed to be due and payable by him to the complainant with interest thereon at the rate of nine (9) per centum per annum from the first day of June, eighteen hundred and seventy-nine (1879), until paid, together with the further sum of nine thousand four hundred and fifty dollars ($9,450), being the amount of six (6) coupon notes all dated the first day of June, eighteen hundred and seventy-four (1874), signed by the said Shepherd, and representing six semi-annual installments of interest, hereby decreed to be due and payable by the said Shepherd on the said principal sum of $35,000, with interest upon the said six coupon notes at the rate of six per centum per annum until paid, as follows, namely, upon $1,575, the amount of the first of said coupon notes, from the first day of December, eighteen hundred and seventy-six; upon $1,575, the amount of the second of said coupon notes, from the first day of June, eighteen hundred and seventy-seven; upon $1,575, the amount of the third of said coupon notes, from the first day of December, eighteen hundred and seventy-seven; upon $1,575, the amount of the fourth of said coupon notes, from the first day of June, eighteen hundred and seventy-eight; upon $1,575, the amount of the fifth of said coupon notes, from the first day of December, eighteen hundred
345 and seventy-eight; upon $1,575, the amount of the sixth of said coupon notes, from the first day of June, eighteen hundred and seventy-nine.

2. And shall also pay or bring into this court to be paid to the complainant on or before the said first day of July, 1885, the sum of ten thousand dollars ($10,000), also hereby decreed to be due and payable by the said defendant, Alexander R. Shepherd to the complainant, with interest thereon at the rate of nine (9) per centum per annum from the twenty-second day of March, eighteen hundred and eighty, until paid, together with the further sum of thirty-one hundred and fifty dollars ($3,150), being the amount of seven coupon notes all dated the twenty-second day of March, eighteen hundred and seventy-five, signed by the said defendant Shepherd, and

representing seven semi-annual instalments of interest hereby decreed to be due and payable by the said defendant Shepherd upon the said principal sum of $10,000, with interest upon the said seven coupon notes at the rate of six per centum per annum until paid, as follows, namely, upon $450, the first of the said coupon notes, from the twenty-second day of March, eighteen hundred and seventy-seven; upon $450, the second of said coupon notes, from the twenty-second day of September, eighteen hundred and seventy-
346 seven; upon $450, the third of said coupon notes, from the twenty-second day of March, eighteen hundred and seventy-eight; upon $450, the fourth of said coupon notes, from the twenty-second day of September, eighteen hundred and seventy-eight; upon $450, the fifth of said coupon notes, from the twenty-second day of March, eighteen hundred and seventy-nine; upon $450, the sixth of said coupon notes, from the twenty-second day of September, eighteen hundred and seventy-nine; upon $450, the seventh of said coupon notes, from the twenty-second day of March, eighteen hundred and eighty.

3. And shall also pay, or bring into this court to be paid, the costs of this cause as taxed by the clerk of this court on or before the said first day of July, 1885, the real estate described in these proceedings, namely, lot numbered three (3) in A. R. Shepherd's subdivision of square numbered one hundred and sixty-four (164), according to the subdivision recorded in the office of the surveyor of the District of Columbia, in Liber W. B. M., folio 171, of the books of the surveyor, with all and singular the buildings and improvements thereon, be sold.

5. It is further ordered, adjudged, and decreed that Henry Wise Garnett and John F. Hanna be, and they are hereby, ap-
347 pointed trustees to make such sale, and the course and manner of their proceedings shall be as follows:

They shall first file in this court their seperate bonds to the United States, executed by themselves, with sureties to be approved by this court, each in the penalty of one hundred thousand dollars, conditioned for the faithful performance by them of the trust reposed in them by this decree or which may be reposed in them by any future order or decree in the premises. The said trustees shall then proceed to make sale of the said described premises at public auction in front of said premises, subject to the existing lease of said premises to the minister of Russia, terminating on the first day of October, A. D. 1886, and mentioned in the proceedings in this cause, having given at least twenty days' daily notice by advertisement in two or more daily newspapers printed in the city of Washington, and such other notice as, in their discription, may seem proper, of the time, place, manner, and terms of said sale, which terms shall be as follows, to wit: One-fourth of the purchase-money to be paid in cash on the day of sale or of the final sale thereof by this court, and the residue thereof in three equal instalments, at one, two, and three years;
348 the deferred payments to be secured by the notes of the purchaser bearing date on the day of sale, with interest and a reserved lien upon the property sold, or all cash, at the option of

the purchaser thereof. The trustee- shall also require a deposit of five hundred dollars at time of the sale from the purchaser, and as soon as may be convenient after such sale the said trustee- shall return to this court a full and particular report of the same, with their affidavit of the truth and correctness thereof and of the fairness of said sale annexed; and upon the satisfaction of such sale by this court, and upon the full compliance by the purchaser with all the terms of the sale and payment of all the purchase money, the said trustees shall, by a good and sufficient deed executed and acknowledged agreeably to law, convey to the purchaser or purchasers of said described real estate, and to his, her, or their heirs, the said described real estate to him, her, or them sold, free, clear, and discharged of all claim of the parties of this cause or any of them, and of any or all persons claiming by, through, or under them or either of them. And the said trustee shall bring into this court the proceedings of the said sale, to be paid and applied in accordance with the provisions of this decree, after deducting the expenses of the sale, the usual trustee's commissions, and the cost of this suit.

349 6. And the said trustees are hereby ordered and directed before the said first day of July to examine witnesses before the auditor of this court to ascertain the relative values of that part of the real estate hereby decreed to be sold which is described as part of lot numbered two (2) in square numbered one hundred and sixty-four (164), bounded as follows: Beginning at a point on north K street forty-three feet and nine inches east of the southwestern corner of said square, and running thence west on K street forty-three feet and nine inches to said southwestern corner of said square; thence northwesterly along the line of Connecticut avenue about eighty feet and ten inches to the south line of the original lot numbered three in said square; thence northeasterly and at right angles with said avenue and along the line of said lot three about eighty-five feet to intersect a line drawn due north from the point of beginning, and thence due south to the point of beginning, with the buildings and improvements upon the said land; and of that other part of the said real estate which is described as lot A in said square, the said lot A being the rear twenty-eight feet two and a half inches of said sub-lot numbered three in said square, as hereinbefore decreed to be sold, with the buildings

350 and improvements upon the said lot A; and the said trustees shall give not less than three days' previous notices to the parties to this suit, or their solicitors, before taking such testimony; and the said parties, or either of them, are or is authorized to take further testimony before the auditor upon similar notice to the trustees and to the parties adverse in interest for the purpose of proving the relative values of the said respective parts of the real estate hereby decreed to be sold; and the said testimony shall be closed before the first day of June next, and the auditor shall report to the court his conclusions from the evidence, together with the said testimony, on or before the fifteenth day of June next; and further testimony on the subject may be taken, if the court shall think proper, upon further order before the proceed of sale shall be ——;

but the taking of the testimony hereby on their sale, and the proceedings thereon, shall not operate to delay the sale of the property by the said trustees.

7. It is further adjudged, ordered, and decreed that the net proceeds of the sale which shall appear to the court to represent the value of that part of the said real estate described as part of lot numbered two, with the buildings and improvements thereupon,
351 after deducting therefrom the aliquot proportion of the costs, commissions, expences, and charges of this suit chargeable against such part, shall be applied towards the payment of the claims of the complainant as hereinbefore specified, and the net proceeds of the sale which shall appear to the court to represent the value of that part of the said real estate described as lot A, with the buildings and improvements thereon, after deducting therefrom the aliquot proportion of the costs, commissions, expences, and charges of this suit chargeable against said lot A, shall be applied towards *to* the claims of the defendant, Mercy Maria Carter Gray, as the same may hereafter be ascertained in the progress of this cause; and if the net proceeds of the part of lot numbered two aforesaid, so as aforesaid ascertained, shall exceed the amount of the claims of the complainant, such excess shall be applied towards the payment of the claims of the said Gray if the same remain unsatisfied after the application of the net proceeds of the said lot A, as aforesaid.

8. It is further adjudged, ordered, and decreed that the net amount of rents which have been received from the said described real estate by the receiver in this case, F. P. B. Sands, Esq.,
352 after deducting the costs, commissions, and expenses of the said receivership and such payments for repairs as have been authorized by this court, shall be applied to the payment of taxes heretofore paid by the complainant and those insurance premiums which have been properly paid by the complainant on the said premises (such amounts so paid by complainant to be ascertained hereafter by the auditor of this court) and to the payment of all taxes on the said premises or any part thereof now due and unpaid, and the residue of such receipts from the rents shall await the further order of this court after the accounts of said receiver shall have been stated and improved.

9. It is further adjudged, ordered, and decreed that if the net proceeds of the sale hereinbefore decreed to be applicable to the claims of the complainant under the said deed of trust shall prove insufficient to discharge the said claims of the complainant, as hereinbefore described, the complainant shall have and recover of the said Alexander R. Shepherd whatever amount may remain due of the said claims hereinbefore decreed to be due by the said Alexander R. Shepherd to the complainant after the application thereto of the
353 said net proceeds of sale, and shall have execution therefor as at law.

10. It is further adjudged, ordered, and decreed that the said receiver shall continue to discharge his duties as such officer until the further order of this court.

A. B. HAGNER,
Asso. Justice.

Appeal to Gen. Term. Filed March 26, 1885.

The defendants, Alex. R. Shepherd, David L. Bartlett, Peter F. Bacon, and Sam'l Cross, appeal to the general term from the decree this day passed by the court in special term, and the clerk will please enter the same.

March 26, 1885.

W. F. MATTINGLY,
ENOCH TOTTEN,
A. C. BRADLEY,
Sol'r- for Def'ts.

Appeal entered as ordered.

By the CLERK.

Order Fixing Amount of Appeal Bond. Filed March 27, 1885.

GEORGE S. PEPPER
vs.
ALEX. R. SHEPHERD *et al.* } 7803, Equity.

On motion of the defendant Shepherd to fix the amount and character of the security to be given on the appeal to the court in general term to operate as a supersedeas, it is, this 27th day
353*a* of March, A. D. 1885, ordered that such security be a bond in the penal sum of three thousand dollars, with surety satisfactory to the court, conditioned to prosecute said appeal with effect.

A. B. HAGNER.

Appeal to Gen. Term by Complainant. Filed April 14, 1885.

GEORGE S. PEPPER
vs.
A. R. SHEPHERD *et al.* } 7803, Equity.

The clerk will please enter an appeal by the complainant from the final decree passed in this cause on the 26th day of March, 1885.

N. WILSON,
HANNA & JOHNSTON,
Sol'rs for Compl't.

354 Filed Apr. 13, 1885. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
ALEXANDER R. SHEPHERD *et al.* } No. 7803. In Equity.

Know all men by these presents that I, Joseph T. Stevens, of the city of Washington, District of Columbia, am bound unto the above-

named George S. Pepper in the sum of three thousand dollars to be paid to the said George S. Pepper, his executors or administrators; to which payment, well and truly to be made, I bind myself, my heirs, executors, and administrators, firmly by these presents.

Sealed with my seal and dated this 13th day of April, A. D. 1885.

Whereas the above-named Alexander R. Shepherd has prosecuted an appeal to the court in general term from the decree passed in this cause on March 26th, 1885: Now, therefore, the condition of this obligation is that if the above-named Alexander R. Shepherd shall prosecute his said appeal to effect and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and effect.

JOSEPH T. STEVENS. [SEAL.]

354½ Witness:
W. F. MATTINGLY.

This bond is satisfactory to us.

HANNA & JOHNSTON,
Sol'rs for G. S. Pepper.

Approved:
A. B. HAGNER.
April 13, '85.

Proceedings in General Term.

In the Supreme Court of the District of Columbia. In General Term.

MONDAY, *October 5th*, 1885.

Proceedings before the supreme court of the District of Columbia, in general term, commencing on the first Monday, 5th day, of October, 1885.

Present: Chief Justice Cartter and Justices Cox, James, and Merrick.

THURSDAY, *October* 29, 1885.

Session resumed pursuant to adjournment.
Present: Chief Justice Cartter & Justices James & Merrick.

GEORGE S. PEPPER
vs.
ALEXANDER R. SHEPHERD *et al.* } No. 7803. In Equity.

355 This cause coming on to be heard, and having been argued by counsel and fully considered by the court, it is therefore, this 29th day of October, A. D. 1885, by the supreme court of the District of Columbia, holding a general term, orde-ed, adjudged, and decreed that the decree passed in this cause at the special term of this court, on the 26th day of March, A. D. 1885, be, and the same is hereby, affirmed, but with the following modifications:

The enquiry directed to be made under paragraph number six of the said decree, in order to ascertain the relative values of the part of lot two (2) and of lot A, as therein described, shall take place after the sale directed by said decree has been made instead of being made before the first day of July, 1885, as directed by said decree.

Paragraph seven of said decree is modified by adding thereto the following:

It is further ordered, adjudged, and decreed that if the debt due to the defendant Gray shall be satisfied otherwise than by the application thereto of her said proper share of the proceeds of the sale of said real estate, as aforementioned, the entire proceeds of sale of said sub-lot three (3) shall be applied to the payment of complainant's said debt and interest; or if the proportion of such proceeds set apart by said decree for the satisfaction of said Gray's debt shall
355½ more than suffice to satisfy the same, then any surplus of such proceeds shall be paid over to complainant on account of his said debt and interest.

Paragraph eight of said decree is modified in the following respect: The balance of rents remaining in the receiver's hands after deducting the payments specified in paragraph number eight in said decree and after the payment of interest to the complainant on the sums hereinbefore advanced by him for taxes and insurance premiums on said premises from the dates, respectively, on which such taxes and insurance premiums were paid by him shall be paid by the receiver to the complainant on account of any balances of principal and interest, as decreed, that remain due after applying the proceeds of said sub-lot three, as by the said decree directed to be apportioned and applied.

It is further ordered, adjudged, and decreed that the orders of the court dismissing the two petitions filed herein by the defendant, Alexander R. Shepherd, on the 24th day of March, 1885, be, and the same are hereby, affirmed.

It is further ordered that the defendant, Alexander R. Shepherd, do pay the costs of this appeal.

By the court:

D. K. CARTTER.

356 And from this decree the defendants, Alexander R. Shepherd, Samuel Cross, Peter F. Bacon, David Bartlett, and Mercy M. C. Gray, pray an appeal to the Supreme Court of the United States in open court, and the same is allowed, and the amount of supersedeas bond is fixed at $1,000.

By the court:

—— ——.

MONDAY, *November* 2, 1885.

Session resumed pursuant to adjournment.
Present: Chief Justice Cartter, Justice James.

GEORGE S. PEPPER
vs.
A. R. SHEPHERD *et al.* } No. 7803.

The defendants, Alex. R. Shepherd, Samuel Cross, Peter F. Bacon, David L. Bartlette, and Mercy M. C. Gray, having appealed in open court to the Supreme Court of the United States from the decree passed herein at the present *time* on the 29th day of Oct., A. D. 1885, it is, this 2n- day of Nov'r, A. D. 1885, ordered that said appeal be, and the same hereby is, allowed, and that the amount of the supersèdeas bond on behalf of the defendants Shepherd, Cross, Bacon, and Bartlett be, & the same is hereby, fixed at one thousand dollars, and on behalf of the defendant Mercy M. C. Gray at one hundred dollars.

By the court:

D. K. CARTTER,
Chief Justice.

356½ THURSDAY, *Nov.* 5, 1885.

Session resumed pursuant to adjournment.
Present: Chief Justice Cartter & Justice James.

GEORGE S. PEPPER
vs.
A. R. SHEPHERD *et al.* } 7803, Eq.

The complainant having appealed in open court to the Supreme Court of the United States from the decree passed herein at the present term on the 29th day of Oct., 1885, ordered that said appeal be, and the same hereby is, allowed, and the bond to be given by said complainant is hereby fixed at two hundred and fifty dollars.

By the court:

D. K. CARTTER,
Chief Justice.

357 Filed Dec. 1, 1885. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia, the — day of ——, 188–.

GEORGE S. PEPPER
vs.
ALEXANDER R. SHEPHERD, MARY G. SHEPHERD, Mercy Maria Carter Gray, James E. Fitch, Lewis J. Davis, Andrew C. Bradley, William F. Mattingly, James M. Johnston, David L. Bartlett, Peter F. Bacon, Samuel Cross, John Alexander, and George M. Barker. } No. 7803, Equity. In Error.

Know all men by these presents that I, Joseph T. Stevens, of the

city of Washington, in the District of Columbia, am bound unto the above-named George S. Pepper in the sum of one thousand dollars ($1,000.00) to be paid to the said George S. Pepper, his executors or administrators; to which payment, well and truly to be made, I bind *ourselves* myself and my heirs, executors, and administrators firmly by these presents. Sealed with my seals and dated this second day of December, 1885.

Whereas the above-named Alexander R. Shepherd, David L. Bartlett, Peter F. Bacon, and Samuel Cross have prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is that if the above-named Alexander R. Shepherd, David L. Bartlett, Peter F. Bacon, and Samuel Cross shall prosecute their said appeal to effect and answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

JOSEPH T. STEVENS. [SEAL.]

Sealed and delivered in presence of—
A. C. BRADLEY.

Approved this 5th day of Dec., A. D. 1885.
D. K. CARTTER, *Ch'f Just'c.*

357½ Filed Jan. 29, 1886. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia, the — day of ——, 188–.

GEORGE S. PEPPER *vs.* ALEXANDER R. SHEPHERD *et al.* } No. 7803, Equity. In Error.

Know all men by these presents that we, George S. Pepper and Frank H. Smith, are bound unto the above-named Alexander R. Shepherd and Mercy M. C. Gray in the sum of two hundred and fifty dollars, to be paid to the said Alexander R. Shepherd and Mercy M. C. Gray or their executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 30th day of December, 1885.

Whereas the above-named George S. Pepper has prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is that if the above-named George S. Pepper shall prosecute his said appeal to effect and answer all damages and costs if he shall fail to make good his plea

then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

GEO. S. PEPPER. [SEAL.]
FRANK H. SMITH. [SEAL.]

Sealed and delivered in presence of—
JOSEPH NORRIS.
WM. G. JOHNSON.

Approved.

HENRY WISE GARNETT.
A. C. BRADLEY.

Approved.
D. K. CARTTER, *Chief Just.*

358 Filed May 23, 1884. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
ALEX. R. SHEPHERD. } Equity, No. 7803.

Before Albert Harper, examiner in chancery.

Be it remembered that at an examination of witnesses begun and held on the 24th day of May, A. D. 1883, and at other times by adjournments, personally appeared before me, Albert Harper, an examiner in chancery of said court, the within-named witnesses: Mahlon Ashford, George W. Brown, Jas. L. Barbour, Jos. T. Coldwell, Thomas Evans, Rob't T. Fleming, William Galt, Jas. M. Johnston, Jos. C. G. Kennedy, William King, M. B. Latimer,
359 George S. Pepper, Martin M. Rohrer, John Seldon, Thos. E. Waggaman, who, being produced as witnesses of lawful age for and on behalf of the complainants, and being first duly sworn and cautioned to tell the truth, the whole truth, and nothing but the truth, did depose and say as follows:

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
ALEXANDER R. SHEPHERD. } No. 7803. Equity Docket.

On the application of Messrs. Hanna & Johnston and Nathaniel Wilson, solicitors for the complainant in the above-entitled cause, I hereby appoint next Thursday, May 24th, 1883, at three o'clock p. m., and the law office of said Messrs. Hanna and Johnston, in the Webster Law building, on D street, between 5th & 6th street-
360 N. W., in Washington, D. C., as the time and place for the oral examination of witnesses for the complainant in the above-entitled cause.

And I hereby direct that notice be served this day by said solici-

tors for the complainant on Messrs. William F. Mattingly, Andrew C. Bradley, and Henry Wise Garnett, solicitors for the defendants in said cause, of the time and place for said examination.

ALBERT HARPER,
Examiner in Chancery.

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
ALEXANDER R. SHEPHERD. } No. 7803. Equity Docket.

To Messrs. William F. Mattingly and Andrew C. Bradley, solicitors for the defendants.

GENTLEMEN: Take notice that at the time and place mentioned in the aforegoing order we shall proceed to examine witnesses
361 for the complainant in the above-entitled cause.

You are invited to attend and cross-examine the witnesses.

N. WILSON,
HANNA — JOHNSTON,
Solicitors for Complainant.

Service acknowledged this 22d day of May, A. D. 1883.

THURSDAY, *May 24th*, 1883—3 o'clock p. m.

Met pursuant to the foregoing notice.

Present: Messrs. Hanna & Johnston, solicitors for complainant; A. C. Bradley, Esq., of solicitors for the defendant Shepherd; Henry Wise Garnett, Esq., solicitor for the defendant Gray; and also the examiner.

Solicitors for the respective parties hereby stipulate that copies of the promissory notes mentioned in the bill of complaint and proceedings in this cause may be filed, instead of the original
362 notes themselves, with the testimony now to be taken in this cause, as part of said testimony.

Thereupon, the solicitors for the complainant not being quite ready to begin to-day the taking of testimony on behalf of their client, adjournment is had until Monday next, May 28th, 1883, at 2 o'clock p. m.

ALBERT HARPER, *Examiner.*

MONDAY, *May 28th*, 1883—2 o'clock p. m.

Met pursuant to adjournment.

Owing to the absence of Mr. A. C. Bradley from the city, further adjourned until Tuesday, May 29th, 1883, at 3 o'clock p. m.

ALBERT HARPER, *Examiner.*

Further adjourned until Saturday, June 2nd, 1883.

ALBERT HARPER, *Examiner.*

SATURDAY, *June 2nd*, 1883—4 o'clock p. m.

Met pursuant to adjournment at 3 o'clock p. m.

363 Waited one hour for the appearance of the witness.

Present: Messrs. Hanna & Johnston, solicitors for the complainant; solicitors for the defendants not appearing, although notified; also the examiner and—

JOHN SELDEN, who, being produced as a witness of lawful age, for and on behalf of the complainant, and being first duly sworn, deposes and says as follows:

Direct examination by Mr. HANNA:

Q. Please state whether you are a member of the bar of the District of Columbia.

A. I am.

Q. Please state whether or not the sale of sub-lot A, in square No. 164, was made through you to Gov. Shepherd; and, if so, when and at what price? And, if you please, state the circumstances attending the sale thereof.

A. I have been called somewhat unexpectedly to testify in this case, and my recollections of the details that may possibly affect it are not as accurate as they once were. As to the essential facts upon which I shall testify I think I cannot be mistaken. Sub-
364 lot A, in square No. 164, belonged to one Harris, who devised it to certain persons living in Alabama or Georgia, or both; I represented those devices in effecting a release of their title to this property to Gov. Shepherd. The negotiations between Gov. Shepherd and myself commenced in 1876, I think perhaps before the month of May in that year. On the 23rd of June, 1877, I received from Gov. Shepherd checks to my order on Messrs. Riggs & Co.—one for $1,000, payable on the 3rd of July, 1877; one for a like amount payable on the 25th of July, 1877, and the last one for $1,165, (being $1,000 with accrued interest on $3,000; the principal sum) payable on the 10th of August, 1877—each and all dated on the 22nd of June, 1877. The payment of these checks did not take place at maturity, and the ultimate consum-ation of the transfer was consequently delayed. On the 22nd of April, 1879, Gov. Shepherd sent me a check, dated on the day before, for $202.19, being the balance of the amount due upon the transfer of this title to him, and representing further accrued interest upon the consideration, which was the sum of $3,000. The devisees of Mr. Harris had some
365 time before the 22nd of April, 1879, a year or two perhaps, executed a deed of this sub-lot to Gov. Shepherd, which I delivered, I think, to him personally; certainly either to himself or to Mr. Mattingly, who was acting as his counsel, shortly after the 22nd of April, 1879, when the balance of the purchase money was paid to me through the check of Gov. Shepherd.

Q. Who was the drawer of the checks paid to you?

A. The checks were made and signed by Gov. Shepherd, and by him alone. I may say that under the will of Mr. Harris his de-

visees also owned a lot immediately adjoining sub-lot A, and that proceedings in equity were instituted for the sale of this property, and that at that sale, as I now remember, Gov. Shepherd became the purchaser.

Q. State what, if any, request you received from Mr. Shepherd for the execution of any deed to the property sub-lot A, square No. 164, to another person as grantee?

A. Not very long before the 22nd of April. 1879—I cannot recall the exact date—I was walking on Pennsylvania avenue between 13 & 14th streets on the north side, and met Gov. Shepherd, and, in anticipation of his completion of the payments for this prop-
366 erty, he requested me to have a deed made to some other person than himself. I declined to accede to this request, especially as, in connection with it, he desired that I should act as his counsel in effecting the execution of the conveyance. I did not care to appear to my clients who were at a distance in what they might possibly conceive an antagonistic position to themselves, having represented them and almost immediately afterwards representing Mr. Shepherd.

On the 22' of April, 1879, I received from Mr. Shepherd the following letter:

"OFFICE OF ALEX. R. SHEPHERD, No. 1705 K STREET,
WASHINGTON, D. C., 22*nd April*, 1879.

Mr. John Seldon, No. 1505 Penn'a Av.

MY DEAR SIR: I have to-day taken up check as requested.

I will be obliged if you will have deed to Lewis Clephane made as suggested by you, and will bear all expenses attendant thereupon.

Very truly, ALEX. R. SHEPHERD."

367 To this letter I replied as follows (duplicate of which is now in my copy-book in the usual and ordinary course of business):

APRIL 22ND, 1879.

("187" was printed on my business paper and the figure "9" was written in, making the "1879.")

A. R. Shepherd, Esq.

DEAR SIR: I have your favor of to-day, and am pleased to know of the payment of the balance due on the check. As to the new deed, I should prefer that Mr. Mattingly or Mr. Gordon or some other gentleman who has not acted adversely to you should attend to it. I do not think I suggested that deed, but I will give you such a letter to Mr. Richards, of Alabama, the counsel of the grantors in the old deed, as will enable your counsel to act with every effect that could result from my own employment.

Yours very truly, JOHN SELDEN.

I had never suggested to Gov. Shepherd the name of Mr. Clephane or anybody else other than Mr. Shepherd himself as a possible grantee of the property, and in my letter took caution to indicate

in a spirit of civility, but not to the full degree I felt at the
368 time, that he was mistaken in his supposition upon that point.

Q. At the time that Gov. Shepherd made the request of the 22nd of April, 1879, had a deed been delivered to Mr. Shepherd in his name as grantee?

A. No; I feel quite confident that no deed had been delivered to Mr. Shepherd before he paid the entire amount of the consideration money, and this was effected by Mr. Shepherd by the check which he sent me on the 22nd of April, 1879, and it was shortly after that date that the deed of the divisees of Mr. Harris to Gov. Shepherd must have been delivered to the latter.

Q. Do you know of any deed having been executed to that property by the parties whom you represent?

A. Yes; I have already stated that the devisees of Mr. Harris executed a deed conveying their title to the sub-lot in question to Gov. Shepherd, and that I delivered that deed after the payment of the consideration money either to Gov. Shepherd or to Mr. Mattingly with the very decided belief and conviction that my delivery of the deed was to Gov. Shepherd himself, but to the one or the
369 other, either Mr. Mattingly or Mr. Shepherd, beyond all controversy.

Q. If to Mr. Mattingly, was it to him as attorney of Mr. Shepherd?

A. Unquestionably, and in no other character; for Mr. Mattingly acted as attorney of Mr. Shepherd during this transaction, and so in the beginning had Mr. Gorden, and in payment of the consideration money I received through Mr. Mattingly, on December 8th, 1877, his check for $1,000.

Q. Have you any knowledge of any deed having been subsequently executed to that property by the heirs or devisees of Mr. Harris?

A. I have not. Mr. Mattingly had requested me to give him a letter to the counsel in Alabama of the devisees of Mr. Harris, for whom I acted, with the view of procoring a new deed from those devisees, and on the 10th of May, 1879, he addressed me the following communication on the postal-card which I hold in my hand:

"MAY 10TH, 1879.

"DEAR SELDEN: Please send me the promised letter rela-
370 tive to the Shepherd deed.

"Yours very truly,

(and in print): "William F. Mattingly, attorney and counselor at law, No. 435 7th street, between D and E streets, Washington, D. C."

I have no doubt I gave Mr. Mattingly a letter to Mr. Richards, the counsel in Alabama of the devisees of Mr. Harris, but I have found no memorandum or copy of any such letter.

Q. Please state with whom the negotiations were had in the first instance for the purchase of sub-lot A, when had, with whom consummated, and what they were.

A. I cannot state with any confidence whether the question of title was considered in the first instance by myself and Gov. Shepherd or by myself and Mr. Gordon. Certain it is, however, that Mr. Gordon, at a very early period in the transaction, acted as the agent of Gov. Shepherd, and in reference to the negotiations I had an interview with him on the 5th of May, 1876, and in consequence of that interview addressed to him the following letter (which I now read from my copy book kept in the usual and ordinary course of business):

371 "WASHINGTON, D. C., *May* 5, 1876.

William A. Gordon, Esq.

MY DEAR SIR: As a result of our interview this morning, I beg to say that I am now prepared to advise the devisees of the late Mr. Thomas D. K. Harris to relinquish their interest in lot lettered A in subdivision of original lot numbered (3) three, in square numbered (164) one hundred and sixty-four, in this city, for the sum of $3,500, and doubt not that they would respect the recommendation. Before communicating with them upon this subject I desire to know whether the terms here suggested will prove acceptable to the gentlemen whose interest you represent.

Yours very truly, JOHN SHELDEN."

In reply to that communication I received from Mr. Gordon, whose signature I recognize upon it, the letter I now hold in my hand, and which is as follows:

"Gordon & Gordon, attorneys-at-law, 321 4½ street.

WASHINGTON, D. C., *May 20th*, 1876.

Jno. Selden, Esq.

372 DEAR SIR: I have communicated to Gov. A. R. Shepherd your proposition in regard to sub-lot A, sq. 164, as contained in your favor of fifth inst. Acting on my advice, he has authorized me to offer you the sum of $3,000 for a deed from devisees of Mr. Harris; and, under the circumstances of the case and the large amount already expended by Mr. Shepherd upon the property, I trust you will conclude to advise your clients to accept the offer.

Very truly yours, WILLIAM A. GORDON."

I read from my copy book kept in the usual and ordinary course of business my response to the communication of Mr. Gordon, in the terms following:

"WASHINGTON, D. C., *May 22nd*, 1876.

Wm. A. Gordon, Esq.

DEAR SIR: In reply to your favor of the 20th of the present month, I have to inform you that, being assured that the sum of three thousand dollars (3,000) which you mentioned is to be paid in cash, and

upon receiving from you such suitable form of a deed as you
373 may desire to be by them executed, I will recommend to the devisees of the late Mr. Harris to convey the property in question to Gov. Shepherd upon that consideration.

Yours very truly, JOHN SELDEN."

I hold in my hand a reply from Mr. Gordon to this latter communication, as follows:

"Gordon & Gordon, attorneys-at-law, 321 4½ street.

WASHINGTON, D. C., *May 29th*, 1876.

John Selden, Esq.

DEAR SIR: I write to accept your proposition in regard to the sale of lot A, in subdivision sq. 164, and to state that Mr. A. R Shepherd will be prepared to pay the sum of three thousand dollars in cash upon receipt of deed from proper parties.

From examination of equity papers, Appleby *vs.* Winston, I find that James K. and Sallie Appleby, Mattie R. Winston, Thomas H. Winston, Andrew I. and Jemimiah, E. G. Richards, and Sierria N. Winston will be grantors, but am fearful that the last name- is not yet of full age.

Please inform me whether all the parties reside in one lo-
374 cality, and if one acknowledgement will be sufficient; also as to the age of Sierra N. Winston. If not, we may devise some plan to avoid an equity proceeding.

Regretting delay, I am truly yours,

WILLIAM A. GORDON."

I have in my copy book a letter to Mr. Gordon as follows:

"JUNE 15TH, 1876.

Wm. A. Gordon, Esq.

DEAR SIR: I am informed that Miss Sierra N. Winston will be twenty-one years of age on the 8th day of November next. She is ready to convey, and her co-devisees will unite with her in a bond conditioned for further assurance when she attains her majority. I am further informed that all the devisees can be conveniently assembled for the purpose of executing a common conveyance, though Mr. J. K. Appleton, husband of one of them, is on a visit to Texas at this time. Please prepare such papers as may be necessary and forward them to—

Yours very truly, JOHN SELDEN."

375 I am sure the deed and bond were prepared, but whether by Mr. Gordon or by myself I cannot now recall; it is probable by Mr. Gordon. I do not know who prepared the deed and bond.

JOHN SELDEN.

(Cross-examination is reserved for solicitors for defendants, and thereupon adjournment is had until Wednesday next, June 6th, 1883, at 3 o'clock p. m.)

JUNE 6TH, 1883, WEDNESDAY—3 o'clock p. m.

And now come Messrs. Mattingly and Bradley, solicitors for the defendant Shepherd, and waive cross-examination of the foregoing witness.

Subscribed and sworn to before me this 6th day of June, 1883.

ALBERT HARPER, *Examiner.*

JUNE 6TH, 1883, WEDNESDAY—3 o'clock p. m.

Met pursuant to adjournment.

Present: All the solicitors for the respective parties, also the examiner and—

MAHLON ASHFORD, who, being produced as a witness of lawful age for and on behalf of the complainant, and being first duly sworn, deposes as follows:

376 (It is hereby stipulated and agreed by and between all of the solicitors for the respective parties to this cause that the deposition of the said Mahlon Ashford, taken on the part of the defendants in the cause of Shepherd *vs.* Philip *et al.*, equity, No. 7052, down to his redirect examination, on page 15 thereof, may be here repeated *verbatim* by him and incorporated as part of this his deposition for the complainant in this pending cause.)

Direct examination by Mr. HANNA:

Q. State your name, age, residence, and occupation.

A. M. Ashford; Washington, D. C.; attorney-at-law.

Q. Do you object to stating your age?

A. No; I am about 49; "on or about" 49 years of age.

Q. Will you please state whether you made the abstracts of title or the examination of title of Governor Shepherd's residence for the two loans mentioned in the proceedings in 6201, equity, the first of $35,000 and the second of $10,000, the first in or about the first of June, 1874, and the second in or about March, 1875?

(Question objected to by Mr. Totten because immaterial and irrelevant.)

A. I made abstracts of Governor Shepherd's property about
377 that date; I do not know for what purpose they were intended.

Q. At whose instance?

A. The order of Kilbourn & Latta.

Q. State what were your instructions in the first instance.

(Question objected to by Mr. Totten unless the witness received his orders from Mr. Shepherd or some one representing him.)

A. I received an order from Kilbourn & Latta to examine and report upon the title to sub-lot 2, in square 164.

Q. Is it sub-lot 2 (handing paper to witness)?

A. (After examination of paper). Sub-lot 3. I received an order

from Kilbourn & Latta to examine and furnish an abstract of the title to the sub-lot 3 of Shepherd's subdivision. In the course of my investigation I discovered that the rear portion of this lot A of a former subdivision was defective.

Q. What did you do then?

A. I notified Kilbourn & Latta that that was the case, which is my custom always in the course of investigation.

Q. What instructions did you then receive?

A. I was then instructed to furnish an abstract of the portion that I considered good.

Q. By metes and bounds?

A. It was done by metes and bounds. The heading of the
378 abstract, I think, will show that it says a part of the square by metes and bounds; and that, I believe, ended my connection with the transaction. My recollection is that subsequently Mr. William H. Philip brought to me a deed of trust and asked me to make a note of that on the abstract, which I did. I simply examined it enough to see what it purported to be and made a note of it upon the abstract which I had furnished. Is there anything else you wish to ask me?

Mr. HANNA: No, sir.

The WITNESS: I would like, in justice to myself, to make a statement. I desire to state here in this connection that at the time I did not represent anybody in this transaction. I represented the records alone. I was not counsel for anybody and did not advise anybody.

Q. Did you ascertain subsequently for what purpose these abstracts were made?

A. Oh, I ascertained from mere hearsay. I simply desire to state this fact because of rumors that implicate me in this transaction as being in some way responsible for the litigation that ensued in this matter. I did not have anything at all to do with it. I simply obeyed instructions, and was not counsel or adviser of anybody at all.

379 Q. You obeyed the instructions of Kilbourn & Latta?

A. Yes, sir. No one connected with this case, so far as I know, have imputed to me any responsibility or carelessness in the matter.

Cross-examination by Mr. TOTTEN:

Q. You say the house of Kilbourn & Latta instructed you to make this examination. How did they instruct you—verbally or in writing?

A. Well, their habit was to send a pencil memorandum, which I always destroyed after the case was through.

Q. Don't you remember whether this was in writing or not?

A. No; I do not.

Q. How did you send this message that the back part of this property did not have a good title?

A. I don't remember how that was sent, but I suppose by my office boy.

Q. Did you see either Kilbourn & Latta verbally about it?

A. I don't remember that I saw either of them.

Q. How did the instructions come to you to report upon
380 that portion of the lot which had a good title?

A. I don't remember whether it was verbal or not.

Q. Well, if it came from either Kilbourn & Latta personally you would remember it, would you not?

A. Well, it came from the same source.

Q. Was it in writing?

A. I do not remember whether it was in writing or not. Mr. Olmstead generally attended to matters personally.

Q. Well, did you see Olmstead in relation to this change in the plan?

A. I do not remember; there were a great many transactions between us at that time.

Q. Where did William H. Philip give you that deed of trust?

A. It was at the record office.

Q. And asked you to note it?

A. To note the record of that deed of trust.

Q. Was it recorded then?

A. It was ready to be recorded; it was at my side ready to be handed to the recorder as soon as I made the note of it on the abstract.

Q. And you noted it upon the abstract?

A. Yes, sir.

Q. Where is the abstract?

A. I do not know; the last time I saw it it was in the possession of Mr. Pepper; it was shown to me.

381 Q. Would you recognize the deed of trust if you were to see it now?

A. No, sir.

Q. Think you would not?

A. No, sir.

Q. You do not remember the date?

A. No.

Q. I mean the date when you made this note?

A. No; I don't remember the date independently of the abstract.

Q. Didn't you have any information from Kilbourn & Latta as to what they wanted to do with this abstract of yours?

A. I had no idea for what it was intended until the deed of trust was brought in by Mr. Philip.

Q. Who did Mr. Philip represent?

A. Well, I think he stated that he represented Mr. Pepper, the lender in the transaction. I do not know whether I knew anything about who was the lender at the time. I do not think I took any notice of it.

Q. Had you any connection directly or indirectly with Governor Shepherd about the making of this examination and abstract?

A. No, sir; I had not.

Q. You had not?

A. No, sir.

382 Q. Did you have any with Philip, except as to this deed of trust?

A. No connection with Philip, except the interview I had when he brought the deed of trust.

Q. Your business was confined to Kilbourn & Latta entirely?

A. Yes, sir; up to that time I had never spoken to Governor Shepherd in my life.

Redirect examination by Mr. HANNA:

Q. Please relate the circumstances connected with your making this second abstract of title of the said property in or about March, 1875.

(Mr. BRADLEY: Question objected to as immaterial and irrelevant.)

A. I have no recollection on the subject at all, as to this second abstract of title. This certificate of title here produced was made by me, but I have no recollection of the circumstances attending it.

(Mr. HANNA: Said certificate of title is here offered in evidence and the same is herewith filed in evidence and marked Exhibit A. H. No. 1.)

(Mr. BRADLEY: To which we object as immaterial and irrelevant.)

383 Adjourned until Saturday next, June 9th, 1883, at 2 o'clock p. m.

M. ASHFORD.

Subscribed and sworn to before me this 16th day of May, A. D. 1884.

ALBERT HARPER, *Examiner.*

EXHIBIT A. H. No. 1.

Part of original lot 2, in square numbered 164, fronting 43 feet 9 inches on North K street and about 80 feet 10 inches on Connecticut avenue, as shown by the annexed *flat*

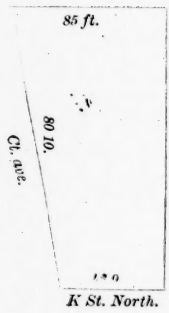
I have fully examined the title to lot (part) 2, square 104, as designated above, and find the same good in Alexander R. Shepherd and free of all lien or encumbrance, except a deed of trust to Andrew C. Bradley and William H. Philip, dated June 1, 1874 (Liber 754, fol. 51), to secure George S. Pepper or order $35,000 (thirty-five thousand dollars) in five years from June 1, 1874, with interest from date @ 9 %, payable semi-annually.

Taxes appear paid to June, 1875.

M. ASHFORD.

March 22nd, 1875.

384



I have examined the deed of trust securing the note of A. R. Shepherd, of this date, for $10,000, at 5 y'rs, 9% int. coupons attached, and it is correct.

I have not seen the policy of insurance. This note, being payable in Phila., is subject to the same objection as the trust note of which I advised you.

WM. F. MATTINGLY.

March 22nd, 1875.

ALBERT HARPER, *Examiner.*

Exhibit A. H. No. 1.

SATURDAY, *June 9th*, 1883—2 o'clock p. m.

Met pursuant to adjournment.

Present: Solicitors for the respective parties; also the examiner; and—

JOSEPH C. G. KENNEDY, being produced as a witness of lawful age for and on behalf of the complainant and being first duly sworn, deposes and says as follows:

My name is Joseph C. G. Kennedy; I am attorney for national banks, and have incident-ly charge of considerable real
385 estate; my residence is in Washington city, D. C.; my office is No. 720 15th street N. W.

Direct examination by Mr. JOHNSTON:

Q. How long have you been engaged in purchasing real estate?

A. Twenty-five years.

Q. Have you any special knowledge of the house on the northeast corner of K street and Connecticut avenue, formerly the residence of Governor Shepherd?

A. It is on the northeast corner of the crossing and the southwest corner of the square. I am perfectly familiar with it.

Q. Have you had charge of the house for the purpose of renting it, or have you been in the house?

A. I have been in the house. I think I have never had charge of the renting of it. I rented the adjoining house to it on K street.

Q. What rent have you been getting for the house of Dr. Bruen to which you have just referred?

A. From $2,000 to $3,000 per annum.

Q. Furnished?

A. Yes.

Q. Well furnished?

A. Yes.

Q. Please state, from your knowledge of the real-estate market and experience as a buyer and seller of real estate and from
386 your special acquaintance with this former residence of Governor Shepherd, what you regard as a fair and reasonable price for an unincumbered title to that property.

A. If it included 8,466 square feet of ground, I should say $65,400.

Q. Are you upon somewhat intimate social relations with the present tenants on the house?

A. I am there every year.

Q. Have you in that way had frequent access to the house?

A. Yes, always.

Q. Through the severals parts of it?

A. Yes.

Q. When did you last see it?

A. Yesterday; I went through it and around it.

Q. What is the general condition of that house with regard to needing repairs?

A. It is in a very bad condition.

Q. Specify in what respects.

A. The ceiling of the ball-room leaks and the exposed stonework has all been injuriously affected by the action of sleet and frost—that is, all that is visible to the eye—and very much which you can infer that is injured to some extent, but which was not visible.

Q. I now call your attention to this plot which is filed with the testimony in equity cause No. 6201, and which is marked
387 Exhibit A. C. No. 2. This plot was prepared by Adolf Cluss, architect of that building, and shows a line running northeasterly from Connecticut avenue to a point 80 feet and ten inches from K street. If the lot north of that line, which is 28 feet 2½ inches front on Connecticut avenue, should be excluded from your estimate of value, what would then be your opinion as to the value of the lot fronting 80 feet on Connecticut avenue and of the building as it would be on that lot?

A. I should say, apart from the loss of the ground, that it would be diminished $12,000. The ground is worth $7,000, and it would require for repairs needed by the injury to the house an amount of at least $5,000. The values that I have given are the intrinsic value at private sale.

(Mr. MATTINGLY: Solicitors for the defendants here give notice to the solicitors for the complainant that they will move the court to strike out the whole of this deposition as being irrelevant and immaterial, and for which reason we object to it, an- waive cross-examination of this witness.)

JOS. C. G. KENNEDY.

Subscribed and sworn to before me this 17 day of July, A. D. 1883.
ALBERT HARPER, *Examiner.*

388 ROBERT I. FLEMING, being produced as a witness, of lawful age, for and on behalf of the complainant, and being first duly sworn, deposes and says as follows:

My name is Robert I. Fleming. I am a builder. My residence is No. 1022 12th street northwest, in Washington, D. C.

Direct examination by Mr. JOHNSTON:

Q. Are you familiar with the value of ground in the northwestern section of the city?

A. Yes; some parts of it.

Q. Have you had much experience of late years in that neighborhood in building?

A. Yes.

Q. Are you familiar with the former residence of Mr. Shepherd, on the corner of Connecticut avenue, now occupied by the Chinese legation?

A. Yes.

Q. What do you think the value of that property is—the lot and house?

A. There is 8,466 feet contained in that lot, I believe. The lot is worth $3.50 per foot, which would make it $29,631.00. The
389 house I should judge to be worth between $35,000 and $40,000.

Q. What is the condition of the improvements with respect to the need of repairs?

A. It needs repairs very badly, particularly through the lower part, through the centre. There are a great many cracks, which, of course, needs pointing up by the plasterer and requires frescoing and requires repairing throughout.

Q. I call your attention to a plat which was filed with the testimony in equity cause No. 6201 and marked Exhibit A. C. No. 2. Please look at the lot, 28 feet 2½ inches front on Connecticut avenue, and state what you think would be the value of the property of which you have testified if that rear lot of 28 feet and the improvements on it were excluded from your appraisement and from the building itself.

A. It would be a very serious damage to the property. It would affect the value of the building and the ground itself, and the building put up there would darken the window to such an extent that it would be hard to estimate the damage to this property. It would certainly damage the market value of this property from $15,000 to $20,000. You could find very few purchasers for the
390 property with this lot cut off, which, if a building was put up there, would pretty well close up and darken the windows.

(Mr. MATTINGLY: All this testimony is objected to as immaterial and irrelevant.)

Cross-examination by Mr. MATTINGLY:

Q. Have you been through that house?

A. I have—from the cellar to the roof. I made two examinations of that property—one early in the spring and one yesterday.

Q. Do you know how it is finished inside?

A. I do.

Q. What would it cost to build that house?

WITNESS: You mean a house just in the condition that house is in at present?

Mr. MATTINGLY: Yes, sir.
A. Certainly not less than $60,000.
Q. Could you build it for that?
A. It might have been.
Q. The probability is that it would cost more, would it not?
A. Perhaps it would.

391 Redirect examination by Mr. JOHNSTON:

Q. Do you mean to build a new house of the same class?
A. Yes.
Q. Without the cracks and defective stone-work.
A. Yes.

By Mr. HANNA:

Q. How much more than $60,000—what would be the outside cost?
WITNESS: To duplicate that house?
Mr. HANNA: Yes.
A. Over and above $60,000?
Q. The outside cost?
A. I would have to go into detail calculation to get that. I should suppose, approximately, it would be from $5,000 to $6,000 more on the stone-work. There is a great deal of defective stone-work in the present house.

Recross-examination by Mr. MATTINGLY:

Q. I asked whether you examined the property recently. What was the main cause of the damage you perceived then?

392 A. In my examination in the spring I found a great many of the chambers filled with large boxes piled up. I cannot say whether or not that was the main cause of the cracks in the ceilings of the chambers. There were a great many cracks there. I thought the building was rather heavily loaded for a dwelling-house.

Redirect examination by Mr. JOHNSTON:

Q. You mean been injured by those boxes being in there?
A. Yes; being heavy weights in the center of the floors, particularly on the east side of the house.

Recross-examination by Mr. MATTINGLY:

Q. Have you any doubt but what those heavy weights have caused those cracks?
A. I presume so; but the shrinkage of the timber and walls would cause a great many of those cracks. I happened to know that there were a great many changes made in those walls before they were finally built.

Redirect examination by Mr. JOHNSTON:

Q. Making a faulty construction?
A. Yes, sir.

ROB. I. FLEMING.

393 Subscribed and sworn to before me this 20th of May, A. D. 1884.

ALBERT HARPER, *Examiner.*

THOMAS E. WAGGAMAN, being produced as a witness of lawful age for and on behalf of the complainant, and being first duly sworn, deposes and says as follows:

My name is Thomas E. Waggaman; I am a real-estate broker and auctioneer; I have been 17 years in the business; my place of business and place of residence are in the city of Washington, D. C.

Direct examination by Mr. HANNA:

Q. State whether you have had much experience in the valuation of real estate and the handling of it in this city.

A. I have; in all sections of the city.

Q. Are you familiar with the premises on the northeast corner of K street and Connecticut avenue, formerly occupied by Governor Shepherd?

A. I am.

Q. State whether you are familiar with the interior as well as the exterior of that house.

394 A. I have been in the house on two or three occasions.

Q. When did you last see the inside of it?

A. The last visit I made there was with Mr. Latimer. We went through all the house except where the ladies were.

Q. How long ago was that?

A. I do not remember; I did not make any memorandum of it.

WITNESS. It was about 2 years ago, was it not, Mr. Latimer?

Mr. LATIMER. I guess it was about 2 years ago.

Q. Do you remember the interior of the house?

A. Yes.

Q. Its finish, etc.?

A. Yes; it seemed to be in nice condition.

Q. What, in your opinion, is the present value of that whole property—of course exclusive of the furniture?

A. What sort of a value do you mean? There are two or three values of property in Washington—one being the value put upon property by a person who wants a suitable place to live in, for which he is willing to pay almost any price; another valuation is one put upon property by a person who wants it for investment; and a third valuation is one put upon property by a person who wants it

395 for speculation. I should say that for speculative purposes the property referred to is worth $40,000; for investment purposes it is worth $50,000; for a man with a private fortune who wants to go and live there, with plenty of money, it is worth from $60,000 to $75,000.

By Mr. JOHNSTON:

Q. What would be the effect on those prices if we were to cut off the rear part of the lot, being 28 feet and 2½ inches on Connecticut avenue, with the improvements on that 28 feet?

A. I have not looked at it very particularly. It would effect the value of it.

Q. I show you a plate filed with the testimony in equity cause No. 6201 and marked Exhibit A C, No. 2, which shows the southern line of the 28-feet lot and the portion of the improvements that are on that lot. How would that effect the value of the property?

A. It would be hard to estimate. If I were a gentleman with a private fortune I would not buy it at all with that thing on it; it spoils the picture gallery.

(Mr. MATTINGLY: This testimony is all objected to as being immaterial and irrelevant.)

Cross-examination by Mr. MATTINGLY:

Q. Do you know of any property of that character in this
396 city bought for either speculative or for investment purposes at the present time?

A. No; I do not know any place just like it in this city. That place on the corner of 17th and I streets was sold to Mrs. Myers for $50,000. I would rather have that piece of property than Mr. Shepherd's property.

Q. When was it sold?

A. About four or five years ago.

Q. At public auction?

A. No; it was a private sale by Mr. Riggs to Mrs. Myers. Mr. Riggs bought it at auction and then sold it to Mrs. Myers. I think the price was about $50,000.

Q. Is not property of that character uniformly sold to parties who desire to purchase for their own occupation?

A. It is.

Redirect examination by Mr. JOHNSTON:

Q. Is not the class of purchasers who are able to buy expensive property extremely small in this city?

A. There are very few of them, indeed.

Recross-examination by Mr. MATTINGLY:

Q. They are dropping in all the time?
397 A. Yes; on the increase.

THO. E. WAGGAMAN.

Subscribed and sworn to before *in* this 18th of July, A. D, 1883.
ALBERT HARPER, *Examiner.*

M. B. LATIMER, being produced as a witness of lawful age for and on behalf of the complainant, and being first duly sworn, deposes and says as follows:

My name is M. B. Latimer; I am 44 years of age, and have been in the auction business for 21 years; I am a resident of Washington city, D. C.

Direct examination by Mr. HANNA:

Q. State whether you know the property formerly occupied by Governor Shepherd at the northeast corner of Connecticut avenue and K street.

A. I do; very well.

Q. State whether you know the property in the interior.

A. Yes; I went through it yesterday.

Q. What, in your opinion, is a fair valuation of that whole property, exclusive of the furniture?

398 A. I value the property at the northeast corner of Connecticut avenue and K street, at the lowest calculation, $3.50 per foot for the ground. I think it is in the centre of the most valuable property of this city. That property will retain its value—no decrease, nothing backward at all. Then, in regard to the building, from my own common sense of the matter, I should put it down at $40,000, taking in the cracks and all; that brings the property up to about $69,000 and some hundred dollars. I made a thorough examination of the property, and went through the house.

Q. What would be the depreciation in the value of that property if the rear part, 28 feet 2½ inches front on Connecticut avenue and running back the entire depth to the end of the lot, were not included in the property? I call your attention to a plat filed with the testimony in equity cause No. 6201 and marked Exhibit A C No. 2, which shows how much of the improvements would be cut off corresponding with that width of that lot on Connecticut avenue.

WITNESS: Would it take off the ball room?

Mr. HANNA: Yes; it cuts that much of it off (showing the witness the plat).

A. Of course it would affect its present value. I do not think it would be over $5,000.

399 By Mr. JOHNSTON:

Q. What is that lot worth?

A. About $2.50 per foot there.

Q. What effect would it be in the value of the main property on the corner if you were to cut off this portion of that property?

A. I do not know the mere value of that rear lot. It would be affected very materially if you were to cut off that rear lot; it would affect the property to a certain extent.

Q. What effect do you think a change in the construction of the house that would be caused by that rear lot being cut off and the effect upon the light on the main structure on the corner lot by a building on that rear lot?

A. I do not think that, so far as the main structure is concerned, it would cut off the light much. The only injury that would be done would be at the rear end of the gallery. That is the only thing affected at all. As a matter of course that has a certain value, but I do not know how to estimate it.

(Mr. MATTINGLY: The whole of this testimony is objected to as

being immaterial and irrelevant, and cross-examination of this witness is waived.)

Adjourned until Wednesday, 3 o'clock p. m., June 13, 1883.

M. B. LATIMER.

400 Subscribed and sworn to before me this 18th day of July, A. D. 1883.

ALBERT HARPER, *Examiner.*

Further adjourned, at the request of the solicitors for the complainant, until Monday, at 3 o'clock p. m., June 18, 1883.

Further adjourned, at the request of the solicitors for the defendant, until Tuesday, at 3 o'clock p. m., June 19, 1883.

Further adjourned, at the request of the solicitors for the defendant, at 3 o'clock p. m., Wednesday, June 20, 1883.

Further adjourned, at the request of the examiner, until Saturday, 3 o'clock p. m., June 23, 1883.

Further adjourned, at the request of the examiner, until Monday, 3 o'clock p. m., June 25, 1883.

ALBERT HARPER, *Examiner.*

MONDAY, *June* 25, 1883—3 o'clock p. m.

Met pursuant to adjournment.

401 Present: Solicitors for the complainant. (Solicitors for the defendants having been duly notified, but not being able to be present); also the examiner, and

JOSEPH T. COLDWELL, who, being produced as a witness of lawful age for and on behalf of the complainant, and being first duly sworn, deposes and says as follows:

My name is Joseph T. Coldwell; I am 52 years of age; I am and have been for 15 or 16 years a real estate broker and auctioneer in the city of Washington, D. C.

Direct examination by Mr. HANNA:

Q. What experience have you had in the valuation and sale of real estate?

A. Considerable experience in the sale of private property.

Q. Are you familiar with the property situated at the northeast corner of K street and Connecticut avenue, formerly occupied by Governor Shepherd?

A. I am.

Q. Have you been in the house?

A. I was in the house several years ago.

Q. Do you remember the character of the interior?

402 A. I do.

Q. What, in your opinion, is the value of that house?

A. I should think from $60,000 to $65,000, at the present value of ground in that neighborhood. That would be the full value of it for a person wishing to reside in the house. As an investment it would be nothing like that sum.

Q. What would be the valuation of the property there as an investment?

A. I do not think, sir, it would pay interest on $50,000.

Q. How do you arrive at the valuation of from 60,000 to $65,000, given above?

A. That is judging from the prices that ground is bringing in that neighborhood, where parties are purchasing for their own use without regard to the percentage to be derived from investment.

Q. What valuation do you place upon the ground in that estimate?

A. In that estimate I should think somewhere in the neighborhood of about $3 per foot; probably more; possibly up to $3.50.

Q. What would that make the sum total of the lot?

A. It would make the sum total somewhere in the neighborhood of from $20,000 to $25,000, rough estimate.

403 Q. What dimensions of the lot do you include in your estimate?

A. I am taking in the ground that the house stands on.

Q. Running back on Connecticut avenue how far?

A. I am including the property known as the Shepherd property; that would be 109 feet on Connecticut avenue.

Q. Does that include the lot on which the rear of the picture gallery stands?

A. Yes.

Q. Then in your estimate the improvements amount to $40,000 or in that neighborhood?

A. About $40,000, and the ground I estimate from $20,000 to $25,000.

Q. Please state what, in your opinion, would be the effect upon that valuation by cutting off the lot in the rear, fronting about 28 feet on Connecticut avenue and running back that width and upon which a portion of the picture gallery stands, that portion being, as indicated on the plot which I now show you, marked Exhibit A. C. No. 2, filed with testimony in equity cause No. 6201, docket No. 18.

A. I should think that it would injure the property very materially.

404 Q. What reduction from the figures given as the valuation for the whole property would you make approximately for cutting off that lot and the portion of the improvements thereon.

A. That is a very difficult question to answer. The loss of ground and the damage to the house make a very considerable damage. If the lot contains 2,656 feet, which it seems to contain, in my opinion it would damage the property at least $5,000, if not more. By cutting through the building it would damage the property to a still greater extent. I mean by that that if a house had been built on the lot that much smaller in size it would be worth $5,000 less. Now, by cutting off that lot and a portion of the back building it would damage it to a much greater extent.

Q. Can you give any approximate estimate of the damage in cutting of- that part of the house?

A. I would not like to say what the damage would be.

Q. What do you think the whole property would bring at auction?

A. I do not believe that it would bring over $60,000 or $65,000, if that. It is a difficult question to answer for the reason, as I stated in my former testimony, that a person wishing a house of that size and to put that much money in it would prefer selecting his own site and modeling his house to suit himself.

405 Q. The buyer at auction at that price would, then, as I understand you, be a man who would not buy for the purposes of an investment?

A. Not at all, sir.

Q. What I meant by a sale at auction was a forced sale of the property.

A. The price I named would be in case parties wished to purchase for a residence for themselves and not for investment.

Q. And at a forced sale what do you think the property would bring?

A. I can see very little difference now between forced sales and sales not forced. Property brings as much now at auction as at private sales.

Q. In that locality?

A. Yes; in that locality.

Q. What is the character of this property as to the amount of repairs necessary to keep it up from year to year?

A. I have not been in the house for so long a time.

Q. I mean the character of repairs for this class of property?

A. That I cannot answer very well. At first, when a very fine and extensive house of that kind is built, there is not much repairs to be done for a few years; but after that, especially where

406 the houses are rented, it requires a great deal to keep them in repair because they are being damaged all the time.

JOSEPH T. CALDWELL.

Subscribed and sworn to before me this 9th day of August, A. D. 1883.

ALBERT HARPER, *Examiner.*

MARTIN M. ROHRER, being produced as a witness of lawful age for and on behalf of the complainant and being first duly sworn, deposes and says as follows:

My name is Martin M. Rohrer; I am a real-estate broker at No. 921 F street northwest, in Washington, D. C.

Direct examination by Mr. HANNA:

Q. How long have you been engaged in that business?

A. I should suppose since 1866.

Q. What has been the extent of your experience in buying and selling real estate?

A. I have sold a great deal of property for others and bought and sold a great deal for myself.

Q. What opportunities of ascertaining the values of real estate in

the localities were expensive property is situated do you think you have had so as to be able to furnish an opinion as to
407 values of such property?

A. In some sections of the city the prices of property has enhanced so arbitrarily that I could not give you an opinion. I could as to a fixed locality.

Q. Do you know the property formerly occupied by Governor Shepherd on the northeast corner of K street and Connecticut avenue; are you familiar with the property in that part of the city?

A. Yes; to a certain extent; property there has enhanced in value, particularly the ground.

Q. Are you able to furnish an opinion as to the value of that property?

A. I do not think it is worth any more to-day than when I gave my opinion before; whilst the ground may have arisen in value, the house has deteriorated. I do not feel capable of furnishing an opinion about it.

Q. What, in your opinion, is the present fair valuation of that property, ground, and improvements complete, of course excluding the furniture?

A. How many square feet are there?

Q. I show you a plot which is marked Exhibit A. C. No. 2 and filed with the testimony in equity cause No. 6201, docket 18.
408 The total area of the ground, including the lot known as sublot A, according to the subdivision thereof made by Mr. Shepherd, contains about 8,466 square feet, the front on Connecticut avenue being 109 feet and ½ inch and on K street 43 feet 9 inches.

A. I should judge that property, ground, and improvements to be worth from $65,000 to $75,000, because the ground along there has enhanced very much in value.

Q. Would the property, in your opinion, reasonably be expected to bring that much at public auction?

A. It would depend a good deal upon who would want it; it is a large sum of money.

Q. Is the valuation you have given upon the basis of an investment?

A. That property would rent for $300 a month without any furniture; yes; I base that value upon investment, not as a matter of speculation, but more for a home or an investment.

Q. At what percentage?

A. It would be about 5 per cent. interest.

Q. That is, without deducting the taxes and repairs?

A. Well, it would not pay much as an investment; that class of property never is much of an investment; heavy property like that for a investment does not pay much over 3 per cent.

409 Q. I call your attention to its value as an investment in the ordinary ways of business.

A. As an investment the property would not be worth nearly as much as I estimated, and yet I believe it would bring it by a class of persons who wanted a home; but as an investment no person would give anything like that for it. I am certain that they would

not. That was what I wanted to get at. As a fair investment, including the taxes and repairs, I would not consider the property worth over $50,000.

Q. What would be the effect upon the valuation of the property if, as it is now constructed, sub-lot A in the rear (on which part of the picture gallery stands, the dimentions of said sub-lot A being shown by this plat, which I now exhibit to you, filed with the testimony in equity cause No. 6201 and marked Exhibit A C No. 1, annexed to the plat of this city) was cut off?

A. The effect would be very serious.

Q. To what extent do you think, approximately, that would reduce the estimate of valuation that you have given for the whole property?

A. Strictly speaking, that is hard to say, but it would be very apt to destroy the sale of the house altogether, provided that
410 portion so cut off could not be had at a reasonable figure, as it would destroy the symmetry of the house, its beauty, and its utility.

(Adjourned subject to notice.)

M. M. ROHRER,
921 *F St.*

Subscribed and sworn to before me this 19th day of August, A. D. 1883.

ALBERT HARPER, *Examiner.*

SATURDAY, *June* 30, 1883—3 o'clock p. m.

Met pursuant to verbal notice.

Present: Solicitor for the complainant; also the examiner. Solicitors for the defendant not being present, adjourned to—

MONDAY, *July* 2, 1883—3 o'clock p. m.

Met pursuant to adjournment.

Present: Solicitors for the complainant; also the examiner. Solicitors for the defendant not being present, adjourned to—

SATURDAY, *July* 7, 1883—3 o'clock p. m.

Met pursuant to adjournment.

Present: Solicitors for the complainant; also the examiner. Solicitors for the defendant being absent from the city, further adjourned to—

411 MONDAY, *July* 9, 1883—3 o'clock p. m.

Met pursuant to adjournment.

Present: Solicitors for the complainant; also the examiner. Solicitors for the defendant being absent from the city, further adjourned to—

TUESDAY, *July* 10, 1883—3 o'clock p. m.

Met pursuant to adjournment. Further adjourned to—

FRIDAY, *July* 13, 1883—3 o'clock p. m.

Met pursuant to adjournment.

Present: Messrs. Hanna and Johnston, solicitors for the complainant; William F. Mattingly, Esq. (of solicitors for the defendant); also the examiner and—

GEORGE W. BROWN, who, being produced as a witness of lawful age for and on behalf of the complainant and being first duly sworn, deposes and says as follows:

Direct examination by Mr. JOHNSTON:

Q. State your business.

A. Real-estate broker. I am a member of the firm of Fitch, Fox & Brown.

412 Q. Were you with the firm of Fitch, Fox & Brown in any capacity in April, 1876?

A. I was a clerk with the firm at that time.

Q. Please state what the book is which you have brought with you.

A. That is a letter-press book used by the firm at that time.

Q. In which the letters were copied in the ordinary course of business?

A. Yes.

Q. In whose handwriting is the letter dated April, 1876, on page 604 of that letter book?

A. It is in my handwriting, excepting the signature of Mr. Fitch.

Q. At whose request did you write that letter, if you know?

A. That letter was written at Mr. Fitch's dictation, and my impression is that he wrote it and examined into the business in question at Mrs. Carter's request—at that time Mrs. Carter, now Mrs. Gray.

Q. Where is Mr. Fitch now?

A. The last I heard of him he was in Lockport, New York, and was going to Buffalo, where he may be now. He will be in the city about the first of August.

WITNESS: Mr. Johnston, if you can have that letter copied from this book I will be glad. I have some business in the neigh-

413 borhood. I can call by for the book after the letter is copied.

Mr. JOHNSTON: I now offer the letter-press copy of the whole of said letter in evidence, and the same is herewith filed in evidence and marked "Exhibit A. H. No. 2," and is as follows:

(Read my witness:)

EXHIBIT A. H. No. 2.

"APRIL 18TH, 1876.

"Mrs. Mercy M. Carter, present.

"DEAR MADAME: In compliance with your request of yesterday for our opinion as to the saf-ty of transferring a loan of -40,000

from its present position to the residence of ex-Gov. A. R. Shepherd, situated at the corner of Conn. Ave. and K St., same to be secured by a second mortgage (the prior mortgage being for $45,000), we would say that upon examination we are reliably informed that the property has cost $150,000, and this amount we do not consider excessive considering the unusual size and character of the improvements and as compared with the price for which, a year since, we sold the adjoining residence, viz., $50,000 cash.

414 "In addition to this the furniture cost, we understand, about $50,000. Of course the property would not realize anywhere near cost at the present dull period, but the same may be said with even more truth of the properties upon which your security now rests. We are, therefore, of the opinion that you may, without injury to your own —, make the transfer, provided that Mr. Shepherd will give you as collateral security a chattel mortgage upon the furniture. In addition to this an insurance policy for nearly, if not quite, the amount of the loan should be taken out and an abstract of title to date be furnished, made up by a reliable abstract searcher. As a still further security in the event of death a policy of life insurance for a reasonable sum would be of value. All this being done, while we do not consider second mortgages as satisfactory security, we cannot see that you endanger the saf-ty of your loan by making the transfer suggested.

"Yours respectfully, FITCH, FOX & CO.,
"GEO. W. BROWN."

NOTE.—The blank space after the word "own" could not be filled in because the word in that place in the letter-press book
415 could not be made out, it being illegible, but appeared to be the word "interest" or the word "interests."

I have compared the above copy of letter with the copy in the said letter-press book and certify to its being a correct transcript thereof.

ALBERT HARPER, *Examiner.*

Mr. JOHNSTON: I now offer in evidence the records in the actions at law Nos. 16981, 18373, 18374, 18,490, 19687, 20680, 20935, 20937, 21674, and 3163, and also short copies of the same, and the same are herewith filed in evidence and marked, respectively, Exhibits A. H. Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12.

I also offer in evidence herein the deeds of trust marked Exhibits G. P. No. 1 and Exhibit G. P. No. 2, filed with the bill in equity cause No. 6201, recorded in Liber 754, folio 51, and in Liber 777, folio 489.

I also offer herein, to be read in connection with the testimony in this cause, the depositions of James M. Latta, Hallet Kilbourn, and Alexander R. Shepherd, taken and filed in equity cause No. 6201, docket 18.

ALBERT HARPER, *Examiner.*

416 (Adjourned until Tuesday, July 17th, A. D. 1883, at 3 o'clock.)

Subscribed and sworn to before in [me] this 19th day of May, A. D. 1884.

ALBERT HARPER, *Examiner.*

TUESDAY, *July 17th*, 1883—3 o'c'k p. m.

Met pursuant to adjournment.

Present: Messrs. Hanna & Johnston; Andrew C. Bradley, Esq., solicitor for the defendant Shepherd; Henry Wise Garnett, Esq., solicitor the defendant Gray; also the examiner and—

WILLIAM GALT, who, being produced as a witness of lawful age for and on behalf of the complainants, being first duly sworn, deposes and says as follows:

Direct examination by Mr. JOHNSTON:

Q. Please state your name and business.

A. William Galt; jeweler.

Q. You are a member of the firm of "Galt Brothers?"

A. Yes, sir.

Q. You are also one of the directors and a member of the executive committee in the "Arlington Fire-Insurance Company?"

417 A. Yes; I am one of the executive committee of that company, who have the determining of the value of property for loans and all that sort of thing.

Q. And you are generally familiar, I suppose, with the values of real estate in Washington city?

A. Just as much as any man is who is not especially in the real-estate business but having dealt in real estate and handled it himself and having estimated the value of real estate in the way I have mentioned.

Q. Are you familiar with the property formerly occupied by Gov'r Shepherd, on the corner of "K" street and Connecticut avenue?

A. Only by passing it and the surroundings, &c.; I never was inside of the buildings at all.

Q. From your general knowledge of that building, what would you suppose its value to be—what is its value, in your opinion?

(Mr. BRADLEY: Question objected to as irrelevant, immaterial, and incompetant.)

A. It is one of those things that there might be a considerable margin in regard to the localities and all that sort of a thing, but in the value of property you have to regard what I or what others would give for it either at private or public sale. I do not think the property is worth over $40,000; that is my estimate of it. I

418 base my calculation on the ground that I would not give $40,000 for it, and that is the best way in the world for a person to judge the value of property.

(Mr. BRADLEY: I here make a general objection to the whole of

this deposition, and the cross-examination of this witness is hereby waived.)

WIL. GALT.

Subscribed and sworn to before me this 20th day of May, A. D. 1883.

ALBERT HARPER, *Examiner.*

Mr. GARNETT: I object to Exhibit A. H. No. 2, offered and filed in evidence at the last session, as being inadmissable, because it is not proven that the original was ever mailed, nor that the original cannot be obtained, nor that it is a true copy of the original; and it is further objected to for the reason that this letter was written at the dictation of Mr. Fitch, who has not been examined in this cause, and because it is inadmissable as evidence in this case, being nothing more than his verbal statement would have been if made at that time; and it is further objected to because it was presented and filed in evidence in his absence after he had been present at an ex-
419 amination at the request of the solicitor who had the letter filed in evidence.

Mr. JOHNSTON: The solicitor for the defendant Pepper call- upon Mr. Garnett, as solicitor for the defendant (Mrs. Gray), to produce the original of which Exhibit A. H. No. 2 is a copy.

Mr. GARNETT: I agree that the copy of the letter-press copy shall be filed in evidence subject to all objections as to its inadmissability, which would apply to the letter-press copy referred to.

Mr. JOHNSTON: The solicitors for the complainants here offer in evidence the pleadings in equity causes Nos. 6201 and 7052.

Mr. GARNETT: To which I object as being inadmissable.

Mr. JOHNSTON: I offer here in evidence in this case the original notes for $35,000 and $10,000, respectively, in favor of George S. Pepper, with the coupons attached.

And by agreement of the solicitors for the respective parties, copies of said notes are here incorporated into the testimony in this cause, with the understanding that the originals thereof, which are marked for identification (Exhibits A. H. Nos. 13 & 14), shall
420 be produced at the hearing of this cause, if required by the solicitors for the respective parties or upon proper request, and are as follows:

ALBERT HARPER, *Examiner.*

EXHIBIT A. H. No. 13.—Albert Harper, examiner.

$35,000. WASHINGTON, D. C., *June 1st*, 1874.

Five years after date I promise to pay to the order of George S. Pepper thirty-five thousand dollars, for value received, with interest, payable semi-annually, at the rate of nine per cent. per annum until paid, ten coupon notes of even date herewith and hereunto attached

being given for the interest aforesaid. Payable at the Farmers' & Mechanics' Nat'l Bank, Philadelphia, Pa.

ALEX. R. SHEPHERD.

[On the margin:] Kilbourn & Latta, real-estate note brokers. Secured by deed of trust.

$1,575. WASHINGTON, D. C., *June 1st*, 1874.

Sixty months after date I promise to pay to the order of George S. Pepper fifteen hundred and seventy-five dollars, being six months' interest, at the rate of nine per cent. per annum, due on my promissory note bearing even date herewith. Payable at Farmers' & Mechanics' Nat'l Bank, Philadelphia, Pa.

421 Coupon note No. 10.

Due June 1st, 1879.

ALEX. R. SHEPHERD.

$1,575. WASHINGTON, D. C., *June 1st*, 1874.

Fifty-four months after date I promise to pay to the order of George S. Pepper fifteen hundred and seventy-five dollars, being six months' interest, at the rate of nine per cent. per annum, due on my promissory note bearing even date herewith.

Payable at Farmers' & Mechanics' Nat'l Bank, Philadelphia, Pa

Coupon note No. 9.

Due December 1st, 1878.

ALEX. R. SHEPHERD.

$1,575. WASHINGTON, D. C., *June 1st*, 1874.

Forty-eight months after date I promise to pay to the order of George S. Pepper fifteen hundred and seventy-five dollars, being six months' interest, at the rate of nine per cent. per annum, due on my promissory note bearing even date herewith.

Payable at Farmers' & Mechanics' Nat'l Bank, Philadelphia, Pa.

Coupon note No. 8.

Due June 1st, 1878.

ALEX. R. SHEPHERD.

$1,575. WASHINGTON, D. C., *June 1st*, 1874.

422 Forty-two months after date I promise to pay to the order of George S. Pepper fifteen hundred and seventy-five dollars, being six months' interest, at the rate of nine per cent. per annum, due on my promissory note bearing even date herewith.

Payable at Farmers' & Mechanics' Nat'l Bank, Philadelphia, Pa.

Coupon note No. 7.

Due December 1st, 1877.

ALEX. R. SHEPHERD.

$1,575. WASHINGTON, D. C., *June 1st*, 1874.

Thirty-six months after date I promise to pay to the order of George S. Pepper fifteen hundred and seventy-five dollars, being six months'

interest, at the rate of nine per cent. per annum, due on my promissory note bearing even date herewith.

Payable at Farmers' & Mechanics' Nat'l Bank, Philadelphia, Pa.
Coupon note No. 6.
Due June 1st, 1877.

ALEX. R. SHEPHERD.

$1,575. WASHINGTON, D. C., *June 1st*, 1874.

Thirty months after date I promise to pay to the order of George S. Pepper fifteen hundred and seventy-five dollars, being six months' interest, at the rate of nine per cent. per annum, due on my promissory note bearing even date herewith.

Payable at Farmers' & Mechanics' Nat'l Bank, Philadelphia, Pa.
Coupon note No. 5.
Due December 1st, 1876.

ALEX. R. SHEPHERD.

423 EXHIBIT A. H. No. 14. Albert Harper, Examiner.

$10,000. WASHINGTON, D. C., *March 22nd*, 1875.

Five years after date I promise to pay to the order of George S. Pepper ten thousand dollars for value received, with interest, payable semi-annually, at the rate of nine per cent. per annum until paid; ten coupon notes, of even date herewith and hereunto attached, being given for the interest aforesaid.

Payable at Farmers' & Mechanics' Nat'l Bank, Philadelphia, Pa.

ALEX. R. SHEPHERD.

[On the margin:] Kilbourn & Latta, real-estate note brokers. Secured by deed of trust.

$450. WASHINGTON, D. C., *March 22d*, 1875.

Five years after date I promise to pay to the order of George S. Pepper four hundred and fifty dollars, being six months' interest, at the rate of nine per cent. per annum, due on my promissory note bearing even date herewith.

Payable at Farmers' & Mechanics' Nat'l B'k, Philad., Pa.
Coupon note No. 10.
Due —— —, 18—.

ALEX. R. SHEPHERD.

424 $450. WASHINGTON, D. C., *March 22d*, 1875.

Fifty-four months after date I promise to pay to the order of Geo. S. Pepper four hundred and fifty dollars, being six months' interest, at the rate of nine per cent. per annum, due on my promissory note bearing even date herewith.

Payable at Farm's' & Mech'cs' Nat'l B'k, Phila. Pa.
Coupon note No. 9.
Due —— —, 18—.

ALEX. R. SHEPHERD.

$450. WASHINGTON, D. C., *March* 22*d*, 1875.

Forty-eight months after date I promise to pay to the order of Geo. S. Pepper four hundred and fifty dollars, being six months' interest, at the rate of nine per cent. per annum, due on my promissory note bearing even date herewith.

Payable at Farmers' & Mechanics' Nat'l B'k, Phila., Pa.

Coupon note No. 8.

Due —— —, 18—.

ALEX. R. SHEPHERD.

$450. WASHINGTON, D. C., *March* 22*d*, 1875.

Thirty-six months after date I promise to pay to the order of Geo. S. Pepper four hundred and fifty dollars, being six months' interest, at the rate of nine per cent. per annum, due on my promissory note bearing even date herewith.

425 Payable at Farmers' & Mechanics' Nat'l B'nk, Phila., Pa.

Coupon note No. 6.

Due —— —, 18—.

ALEX. R. SHEPHERD.

$450. WASHINGTON, D. C., *March* 22*d*, 1875.

Forty-two months after date I promise to pay to the order of Geo. S. Pepper four hundred and fifty dollars, being six months' interest, at the rate of nine per cent. per annum, due on my promissory note bearing even date herewith.

Payable at Farmers' & Mechanics' Nat'l B'k, Phila., Pa.

Coupon note No. 7.

Due —— —, 18—.

ALEX. R. SHEPHERD.

$450. WASHINGTON, D. C., *March* 22*d*, 1875.

Thirty months after date I promise to pay to the order of Geo. S. Pepper four hundred and fifty dollars, being six months' interest, at the rate of nine per cent. per annum, due on my promissory note bearing even date herewith.

Payable at Farmers' & Mechanics' Nat'l B'nk, Phila., Pa.

Coupon note No. 5.

Due —— —, 18—.

ALEX. R. SHEPHERD.

426 $450. WASHINGTON, D. C., *March* 22*d*, 1875.

Twenty-four months after date I promise to pay to the order of Geo. S. Pepper four hundred and fifty dollars, being six months' interest, at the rate of nine per cent. per annum, due on my promissory note bearing even date herewith.

Payable at Farmers' & Mechanic-' Nat'l B'k, Phila., Pa.

Coupon note No. 4.

Due —— —, 18—.

ALEX. R. SHEPHERD.

Mr. JOHNSTON: Solicitors for the complainants here offer in evidence the opinion of Judge James in equity cause No. 7052, and it is agreed by the solicitors for the respective parties that a copy thereof may be incorporated into this testimony in this cause and have the same effect as the original opinion would if filed, and the same — as follows:

Opinion.

"I am of opinion that the decree in question in this case is inoperative and void for uncertainty. It purports to substitute a trustee in one of two deeds mentioned in the pleadings without designating which of them. It is true that it can be inferred, from the comparative effects of the substitution in the one or the
427 other case, that the court was not likely to intend to substitute Mr. Johnston for Mr. Bradley in the deed which conveyed only an equitable title; but I do not think that I am at liberty to explain an- give certainty to the decree by reference to such considerations. It has been suggested that a decree may be explained by reference to the pleadings on which it is based, and this undoubtedly may be done in a proper case, but I do not find that the uncertainty of the decree in this case can be cleared up in that way. It follows that, if the decree is uncertain on its face, the alleged title of Pepper, through Mr. Johnson as substituted trustee, is not a cloud upon the title of the complainant, and consequently this court cannot take jurisdiction to grant the relief prayed; therefore, the decree must be that the bill be dismissed.

"JAMES, *J.*"

Mr. BRADLEY: Solicitors for defendant Shepherd object to the admission into this cause the depositions of James M. Latta, Hallett Kilbourn, and Alexander R. Shepherd, taken and filed in equity causes No. 6201, docket 18, as irrelevant, immaterial, and incompetent.

428 Solicitor for the defendant Shepherd also objects to the depositions of Messrs. Coldwell and Rohrer as irrelevant and immaterial, and hereby waive cross-examination of said witnessess.

Mr. GARNETT: Solicitor for the defendant (Mrs.) Gray objects to the deposition of George W. Brown as immaterial, irrelevant, and inadmissable, and hereby waives cross-examination of said witness.

Whereupon adjournment is had until July 19, 1883, at 3 o'clock p. m.

THURSDAY, *July* 19, 1883—3 o'cl'k p. m.

Met pursuant to adjournment.

Present: Solicitors for the complainant; also the examiner.

Owing to the absence of the solicitors for the defendant, adjournment is further had until Friday, July 20, 1883, at 3 o'clock p. m.

ALBERT HARPER, *Examiner.*

FRIDAY, *July* 20, 1883—3 o'clock p. m.

Met pursuant to adjournment.

Present: Solicitors for the respective parties; also the examiner, and—

429 THOMAS EVANS, who, being produced as a witness of lawful age for and on behalf of the complainants, and being first duly sworn, deposes and says as follows:

Direct examination by Mr. JOHNSTON:

Q. Please state your name, age, residence, and occupation.

A. Thomas Evans; 57; Washington, D. C. I am a citizen of the State of Maryland; I have not been engaged in business for the last 8 years.

Q. What was your occupation when you were engaged in active business?

A. Plumber.

Q. You have had a great deal of experience in building here and elsewhere?

A. Yes; I presume I have. I have been in most buildings built here for a great number of years, both public and private.

Q. And you have had a large experience in building in other cities; for instance, Baltimore?

A. Yes, sir.

Q. You have also purchased and sold real estate in Washington city to a considerable extent?

A. Yes, sir.

Q. Especially in the northwestern section of the city?

430 —. Yes, sir.

—. And have built a good many houses on your own account here?

A. Yes, sir.

Q. Are you familiar with the property formerly occupied by Gov. Shepherd, on the northeast corner of "K" street and "Connecticut" avenue?

A. I am, somewhat.

Q. You have been in the house?

A. Yes; since it was finished; not previous to its being completed.

Q. From your knowledge of that property, what would you think its present market value to be?

(Mr. BRADLEY: Objected to as immaterial an- incompetent.)

A. I should think about $40,000.

Q. Upon what do you base that estimate or opinion?

A. I base it on an investment.

Q. If that property were in the market for sale to private purchasers, what do you think would be the probable amount that it would yield?

(Mr. BRADLEY: Objected to as immaterial and incompetent.)

A. That would depend upon circumstances. If a gentleman

wanted it for his own residence he might perhaps give a little more than $40,000; he might give $45,000 or as high as $50,000; but not for an investment. I will say, further, that gentlemen who build houses costing 50,000 like to build them themselves and have
431 their own ideas about it; in houses costing that amount a great many like to build to suit themselves, especially for families; a house costing $10,000 or $12,000 a man might buy it already built.

Cross-examination by Mr. MATTINGLY:

Q. Is property of that sort sold to purchasers who buy for investment?

A. Sometimes we are compelled to sell.

Q. What is that ground worth?

A. Well, the ground might be worth a great deal more if the house was off — as it is now.

Q. What is the ground worth with the house on?

A. I have sold ground in that neighborhood for less than $3 a foot fronting on that same square, belonging to me. I held that ground for 7 years and lost about $1,100. I sold the ground there, about 63 feet on Farragut square, for $9,200 or $9,300, I am not sure which.

Q. Which side of the square?

A. Next to——

Q. Fronting west?

A. Yes, sir.

Q. When did you make that sale?

A. Last year; to Varnum and Sargent, of New York. In fact, I sold to Varnum, who was the purchaser.

432 Q. What is that Shepherd corner lot worth—the ground?

A. That would depend upon circumstances. If that is a big lot——

Q. How many feet does the Shepherd lot contain?

A. I do not know the depth of it.

(Mr. JOHNSTON: About 190 feet deep.

WITNESS: I presume that lot would be worth about $2.75 or $3 per foot.)

Q. What would it cost to construct a building like that?

A. That is a different valuation now. A man might built a house at a very high price and embel-ish it a great deal, and when he came to sell it could not get much for the embel-ishments.

Q. That is not my question. I asked you what it cost to put up that building?

A. I should think that building could be put up here for about $35,000.

Q. Finished as it is?

A. Yes. You might get a man to charge $75,000, or a man to charge $30,000; some men have less money than that. I do not want that superior building by any means.

Q. How long since you were in that house?

A. I have been in that house since Gov. Shepherd left it.
433 I went in there on- day to finish some plumbing work.

Q. And your opinion is that that house could be put up for $30,000 or $35,000?

A. I think so.

Q. Do you know the size of the building?

A. No; I do not know exactly the size of it.

Q. What is your idea of the size of it?

A. If I had known that you were going to ask me such questions when I came here I would have gone and measured the building from cellar to garret. I do not know. I took a cursory glance of the building. I have not been in it for years. I do not know the condition it is in; it may all be knocked to pieces, cracked, and so forth.

Q. And it may not be?

A. From the under foundation put in there I think it likely.

Q. Do you know the foundation put in there?

A. Yes; I know the foundation put under it; it is put on made ground.

Q. Do you mean to say the building is cracked or knocked to pieces, as you intimated?

A. I never saw the foundation. There is no building but what is cracked, more or less. I have not seen one yet where there was not shrinkage in the timber and one thing and another.

434 Q. Do you know how deep the foundation is there?

A. No; I cannot tell you.

Q. Is there a cellar under the house?

A. There is a basement. I do not know whether there is a cellar under the basement or not. I cannot tell.

Q. Your estimate of the value, as I understand you, is what you would be willing to give for it as an investment?

A. I am speaking now as though I had the money and wanted to purchase it. Then I would not give more than $40,000 as an investment to realize upon it. I question whether it would bring any more, unless some gentleman wanted it for his private residence.

(Mr. JOHNSTON: In that case how much would it bring?

WITNESS: I do not think more than $40,000 or $50,000 at the utmost, because men do not want to spend $4,000 or $5,000 a year for house rent. Very few men here can do it.)

Q. Well, we have men here who have done it.

A. Very few.

Q. They bought property here?

A. They are only sojourners, being here for a little while.
435 I do not know any house in the city, except Riggs' house and Corcoran's house, that rents for $2,000 a year. I do not know of one.

Q. You do know a great many houses that cost upwards of $50,000?

A. I do know a great many houses that cost a good deal of money, and I know that the owners would sooner have the money than the houses now.

Q. Do you know what the Brodhead house sold for?

A. He told me that it cost $116,000. I think it was sold for less than $100,000, house and grounds; but it is a different house from the Shepherd house; I am speaking of the building. I am now speaking as a practical man. I think it is a superior house to Mr. Shepherd's house in every way.

THOS. EVANS.

Subscribed and sworn to before me this 18th day of July, A. D. 1883.

ALBERT HARPER, *Examiner.*

WILLIAM KING, being produced as a witness of lawful age for and on behalf of the complainant and being first duly sworn, deposes and says as follows:

436 Direct examination by Mr. HANNA:

Q. Please state your name, age, residence, and occupation.

A. William King; 69 years of age; Georgetown, D. C.; wood & coal merchant.

Q. Please state whether you are connected with the Arlington Fire Insurance Company, and also a member of what is called the executive committee.

A. I am.

Q. Please state what duties you discharge as a member of the executive committee with respect to real estate in this city.

A. We pass upon all matters in relation to loans on real estate, see that the loans are properly negotiated upon what we think is a proper valuation of the property.

Q. State how long you have been engaged in that work on that committee.

A. Six or eight years, I should think.

Q. State what has been the extent of your experience.

A. I have had a moderate experience with what has come under my notice in that insurance company during that time.

437 Q. State whether that experience enables you, with your own knowledge of values of real estate in this city, to express an opinion as to the value of real estate in different sections of this city, and particularly in the northwestern portion.

A. I could not say that I could express a very positive opinion. I could not say, because things have taken such a course as astonish me. It has been called to my attention in several matters in which I have had to act.

Q. Are you familiar with the property situated at the northeast corner of "K" street and "Connecticut" avenue, formerly occupied by Gov'r Shepherd?

A. I know the property very well—that is, I pass it every day.

Q. State whether or not you examined that property recently.

A. I went through the house within a week.

Q. From your knowledge of the values of real estate, and having regard to the increased values thereof, especially in the northwestern

section of the city and in the neighborhood of the property in question, please state what, in your opinion, is a fair and reasonable valuation of that house and the lot on which it stands.

438 (Mr. MATTINGLY: Objected to as irrelevant, immaterial, and incompetent.)

A. I should think that the property at a forced sale or a sale at auction—I would not say a forced sale—might bring from $40,000 to $50,000. I would take a margin of $10,000. It might bring from $40,000 to $50,000. A private customer might be found, in my judgment, that wanted property like that. There seems to be a great many purchasers turning up in this city of fancy property who might give $50,000 for it.

Q. You may state whether it is, in your opinion, a property that addresses itself to the consideration of a limited or a large class of buyers?

A. I think to a very limited class; that is the reason why I think the property would not bring any approximation to its value, like an ordinary piece would.

Cross-examination by Mr. MATTINGLY:

Q. Have you had any experience in building houses?

A. No, sir.

Q. Then you are not able to say how much it cost to build that house?

A. I have built houses, but nothing like that one; no, sir; I am not.

Q. How much is that ground worth?

439 A. I should think it would bring from $4 to $5 per foot.

Q. That property is such as would commend itself to men of large means who wanted a large house to live in in this city?

A. It would commend itself to men of very large means, with a surplus of money, and who wanted to live in elegant style. Of course you know that they are scarce in proportion to the large number of buyers who bid on property; the more valuable the property the more limited is the class of buyers.

Q. The house is very handsomely finished, is it not?

A. Very complete and handsome, I think. I think it has a good deal of surplus work on it, and of useless expense.

Q. That is a matter of taste, is it not?

A. Yes, sir.

Redirect examination by Mr. JOHNSTON:

Q. Mr. Mattingly has referred to the manner of the finishing of this property; is it not of rather gaudy style?

A. I could not say. I thought it was of rather gaudy style. I do not know whether that term would scarcely take my idea of it.

440 I think there is a good deal of work on it that might just as well have been dispenced with. The house would have looked just as nice with the same amount of work or a different kind of work.

(Mr. MATTINGLY: It looks rich and elegant, does it not?

WITNESS: Oh, it is good work; elegant work; no mistake about that. It is somewhat out of order just now.

Mr. MATTINGLY: It has just been vacated?

WITNESS: Some of the stone wants resetting, under the stone steps, in front.)

Q. Would not the preference among buyers for property of this class be to build rather than to purchase?

(Mr. MATTINGLY: Objected to as being a matter-in-chief and because the witness cannot answer.)

A. That I cannot say.

WILLIAM KING.

Subscribed and sworn to before me this 18th day of July, A. D. 1883.

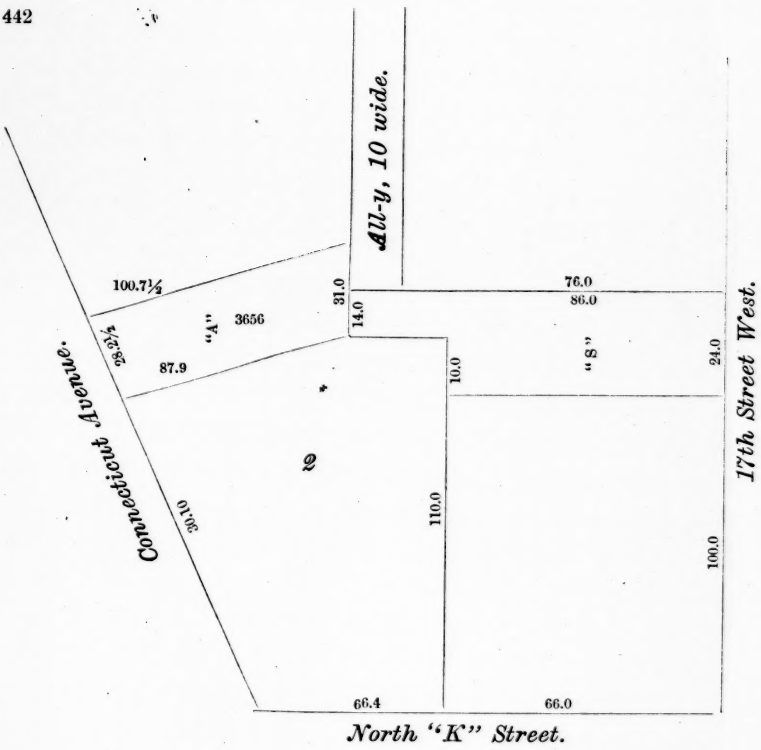
ALBERT HARPER, *Examiner.*

Mr. HANNA: Solicitors for the complainant here offer in evidence the letter of Andrew C. Bradley, Esq., dated March 14, 1878,
441 addressed to George S. Pepper, Esq., and filed as exhibit marked "G. S. P. No. 6" with the bill of complaint in equity cause No. 6201.

And the solicitors for complainant also here offer in evidence the whole record in said equity cause No. 6201 and 7052.

Solicitors for the complainant also here offer in evidence three plats, which are here now produced by Mr. James H. Forsyth, clerk in the surveyor's office of the District of Columbia, from the original books of the surveyor's office showing the subdivisions recorded therein; and the solicitors for the defendants here stipulated and agreed that the said three plats may be here filed in evidence and taken to be correct transcripts from the books of the surveyor's office.

And the same are herewith filed in evidence and marked, respectively, Exhibits A. H., Nos. 15, 16, & 17, as follows:



SURVEYOR'S OFFICE,
WASHINGTON, D. C., *July* 20, 1883.

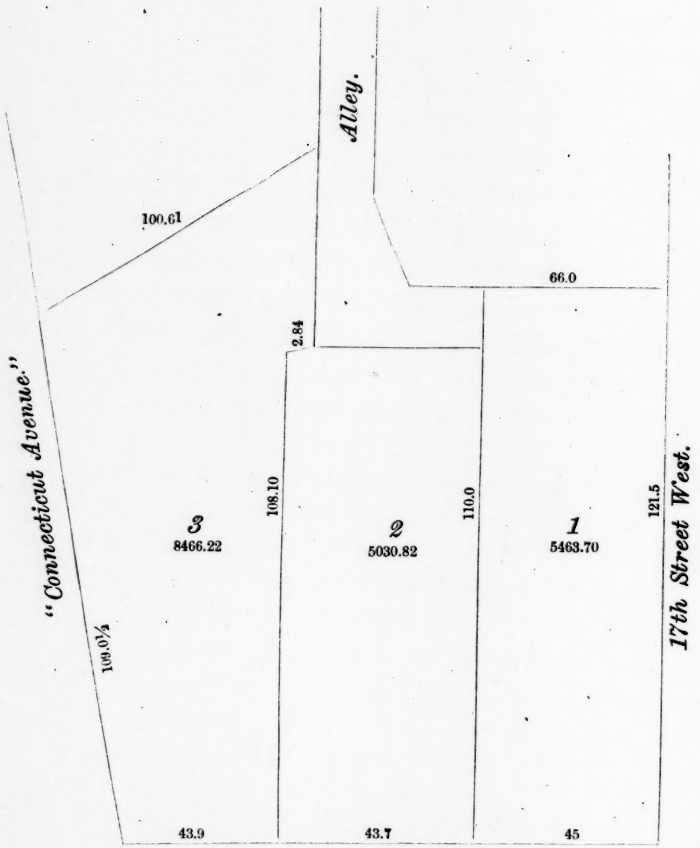
The above plat is a true copy of sub-lot- 1, 2, & "A," in the subdivision of square 164, as made by Thomas De Kalb, Harris, and Chr. Grammer and Julius E. Grammer, trustee for the heirs of G. C. Grammer, on June 2nd, 1857, and recorded in Liber "B," folio 101.

(Signed) WILLIAM FORSYTH,
Surveyor, District of Columbia.

ALBERT HARPER, *Examiner.*

Exhibit A. H. No. 15.

443



SURVEYOR'S OFFICE,
WASHINGTON, D. C., *July* 20, 1883.

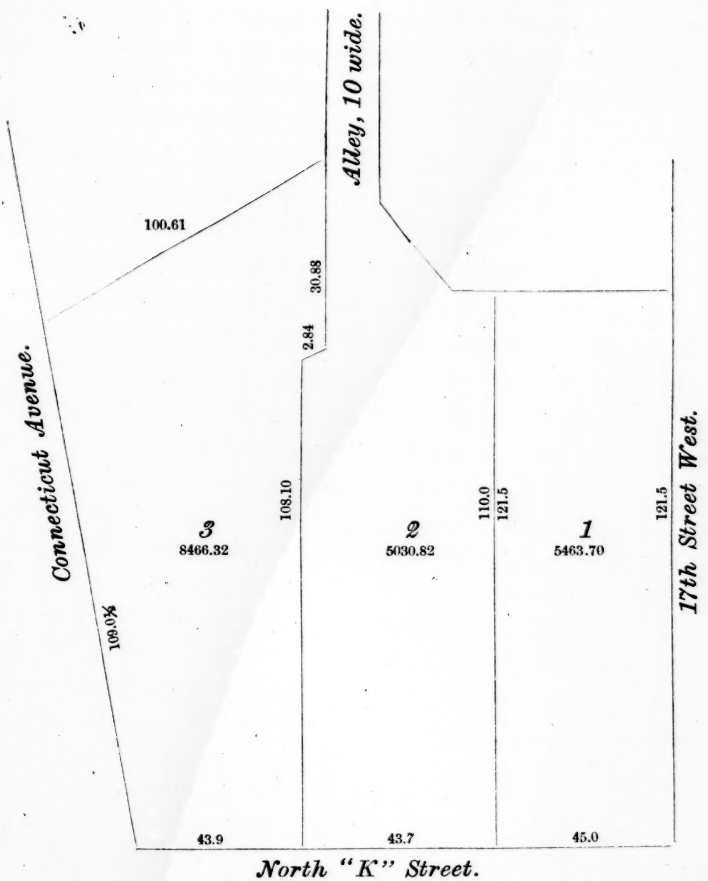
The above plat is a true copy of sub-lots 1, 2, and 3, in the subdivision of square 164, as made by Alex. R. Shepherd on September 8th, 1874, and recorded in Liber "W. B. M.," folio 120.

(Signed) WILLIAM FORSYTH,
Surveyor, District of Columbia.

ALBERT HARPER, *Examiner.*

Exhibit A. H. No. 16.

444



SURVEYOR'S OFFICE,
WASHINGTON, D. C., *July* 20, 1883.

The above plat is a true copy of sub-lot- 1, 2, & 3, in the subdivision of square 164, as made by Alex. R. Shepherd on July 3, 1873, and recorded in Liber "H. D. C," folio 210.

(Signed) WILLIAM FORSYTH,
Surveyor, District of Columbia.

ALBERT HARPER, *Examiner.*

Exhibit A. H. No. 17.

445 JAMES L. BARBOUR, being produced as a witness of lawful age for and on behalf of the complainant and being first duly sworn, deposes and says as follows:

Direct examination by Mr. HANNA:

Q. Please state your name, age, residence, and occupation.

A. James L. Barbour; 50 years of age; Washington, D. C.; grocer.

Q. State whether or not you have had much experience in the values of real estate in Washington city and the extent of it.

A. Well, I have been dealing in real estate off and on for the last 25 years; I have bought and sold it.

Q. In large and small properties?

A. Yes, sir.

Q. State whether you feel competent to express an opinion as to the comparative values of real estate in this city.

A. Well, moderately so, I think.

Q. State whether or not you know the property situated at the northeast corner of K street and Connecticut Ave., formerly occupied by Gov. Shepherd.

A. Yes, sir; I know it.

446 Q. Do you know it on the outside and inside?

A. Yes; but I am a little more familiar with it on the outside than the inside, though I looked through it recently.

Q. State when you looked through it.

A. I think it was on Wednesday of this week.

Q. From your knowledge of the property and from your recent examination of it and from your general knowledge of the values of real estate in Washington city and your experience please state what, in your opinion, is a fair valuation for sale of that entire property in the market, of course the furniture excluded—I mean the entire valuation of that property for sale.

(Mr. MATTINGLY: Objected to as irrelevant, immaterial, and incompetent.)

A. From the examination that I made of the property on Wednesday last I concluded that $50,000 would be a good price for the property.

Q. You may give any reasons that may suggest themselves to you whereby you arrived at that conclusion.

A. I found the property a little different from what I supposed it was; its arrangement was a little different. I noticed some cracks in the walls; I noticed that the front stone-work is defected and disintreg-ated, which I was not aware of before until I made

447 this examination of it. The steps I noticed where they had been repaired and where it would be necessary to do a good deal of work in that way. It seems as though the operation of the water on that stone-work (I do not know what kind it is, but it seems to me to be Ohio sandstone)—the dripping of the water on the stone seems to wear it out.

Q. Is the valuation that you have given of $50,000 based upon

the consideration of the property as an investment or for the residence of some man of wealth?

A. The valuation that I have put upon the property is predicated principally upon the wish or desire of wealthy people to seek residences in that portion of the city. As an investment I should not think it would be a very good one, even at $50,000, because there are very few persons who are able to live in a house costing that much money. I think if that house was located a little to the south or to the northwest from its present location it would be much more valuable than where it now stands.

Q. For what reason?

A. For the reason that it is a low place and is made-ground and always unhealthy before the drainage was made as perfect as it is now.

448 Cross-examination by Mr. MATTINGLY:

Q. Did you go down into the cellar?

A. Yes. I do not know. I went into the basement. There may be a sub-cellar under it.

Q. There is a sub-cellar under the basement?

A. I did not go under that.

Q. And the foundations go down to the original ground—are you aware of that?

A. No; I was not. Since you speak of it, a man in charge of the building told me there was a cellar underneath that; but I did not care to go down.

Q. You did not see any heating apparatus—a furnace—in the portion of the building that you went into?

A. No; I think not.

Q. These improvements, then, extend the full depth of the whole lot, do they not?

A. Yes; that is, they do not cover the entire width of the lot; they extend to the full depth of the lot—that is, the rear improvements.

Q. It is a very large house, is it not?

A. Yes.

Q. Have you had much experience in building?

A. Not a great deal.

Q. Can you give any definite idea as to what it would cost to build that house?

A. No, sir; I cannot.

449 Redirect examination by Mr. HANNA:

Q. What increase upon the valuation you have given would you make by the addition of the sub-cellar, if any?

A. I do not know that that would change my opinion, if any, as to the value of the property—as to my views as to its value. It would cause me to change my views as to the cost of the construction of the building, but not as to the selling value of it.

Recross-examination by Mr. MATTINGLY:

Q. It would not be worth any more with the cellar?

A. It would not sell for any more than the price I have fixed upon it—$50,000.

Q. With cellar or without cellar?

A. I presume it would make a difference, but I do not know that it would make it bring any more than the $50,000—an advantage to the property, of course, but I do not think that the property could be sold with or without it for more than $50,000. These, however, are only my views of it.

JAMES L. BARBOUR.

(Adjourned subject to notice.)

Subscribed and sworn to before me this 24th day of May, A. D. 1883.

ALBERT HARPER, *Examiner.*

450 In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
ALEX. R. SHEPHERD *et al.* } In Equity. No. 7803.

To Messrs. Mattingly, Bradley, and Garnett, solicitors for the defendants:

GENTLEMEN: Please take notice that on Friday next, March 14th, 1884, one o'clock p. m. of that day, the solicitors for the complainant will resume the taking of testimony before me in the above-entitled cause, in the office of Messrs. Hanna & Johnston (Webster Law B'd'g), in Washington city, D. C.

ALBERT HARPER, *Examiner.*

Services acknowledged this 12th day of March, A. D. 1884.

A. C. BRADLEY.
W. F. MATTINGLY.
HENRY WISE GARNETT.

FRIDAY, *March* 14, 1884—1 o'clock p. m.

Met pursuant to the foregoing notice.

Present: Solicitors for the respective parties; also the examiner and—

451 GEORGE S. PEPPER, who, being produced as the complainant witness, and being of lawful age and first duly sworn, deposes and says:

Direct examination by Mr. WILSON:

Q. Please state your name, age, occupation, and residence.

A. George S. Pepper; 70 years; no occupation; city of Philadelphia, Pennsylvania. I am the complainant in this suit.

Q. Are you the owner of the two notes for $35,000 and $10,000 and the coupons thereto attached for interest which are described in the bill of complaint in this suit?

A. Yes, sir.

Q. Are the notes in your possession?

A. They are in my possession. Copies thereof have been produced and filed in evidence and marked Exhibit A. H. Nos. 13 and 14.

Q. Please state what are the general items of your claim against the defendant Shepherd.

A. The principal of the notes and the interest coupons and the certificates for taxes and insurance paid, with interest on those sums.

Q. Have you prepared a statement of the amount claimed by you under those heads? And, if so, please produce and hand it to the examiner to be read and considered in evidence and marked

452 "Exhibit A. H. No. 18."

A. I have, and here produce it.

Mr. MATTINGLY: To which we object as being incompetent.

Mr. GARNETT: Same objection.

453 A. H. No. 13.

Alexander R. Shepherd to George S. Pepper, Dr.

	$ Cts.	$ Cts.
To note of June 1, 1874, principal	------	35,000
" int. thereon @ 9 % per an. from June 1, 1876, until paid		
" note of March 22, 1875, principal	------	10,000
" int. thereon @ 9 % per an. from September 22, 1876, until paid		
" interest on overdue coupon notes payable in accordance with Mr. Shepherd *is* promise in writing, viz:		
9 % p'r an. until paid on $1,575.00 from— Dec. 1, 1876		
" " " " " June 1, 1877		
" " " " " Dec. 1, "		
" " " " " June 1, 1878		
" " " " " Dec. 1, "		
" " " " " June 1, 1879		
" " " $450.00, Mar. 22, 1877		
" " " " " Sep. " "		
" " " " " Mar. " 1878		
" " " " " Sep. " "		
" " " " " Mar. " 1879		
" " " " " Sep. " "		
" " " " " Mar. " 1881		

EXHIBIT A. H. No. 18. Albert Harper, Examiner.

454 To taxes paid by George S. Pepper, viz:

On part of lot 2, sq. 164, for years 1877, 1878, & 1879	$2,692 31	
Less deduction for pay't on drawback certif's	127 65	
		2,564 66
To int. @ 6 % per an. from Nov. 5, 1879		
Ditto for year 1880		715 57
" int. @ 6 % per an. from Dec. 1, 1879		
" insurance premiums paid as follows:		
April 2, 1878		55
Int. @ 6 % per annum.		
June 21, 1878		62 50
Int. @ 6 % per annum.		
June 25, 1878		75
Int. @ 6 % per annum.		
April 9, 1879		50
Int. @ 6 % per annum.		
June 11, 1879		75
Int. @ 6 % per annum.		
Nov. 6, 1879		100
Int. @ 6 % per annum.		
June 1, 1880		75
Int. @ 6 % per annum.		
June 2, 1881		75
Int. @ 6 % per annum.		
June 28, 1882		75

(PART OF EXHIBIT A. H. No. 18.) Albert Harper, Examiner.

455 To insurance premiums paid (continued):

" int. @ 6 per annum.	
To July 2, 1883	75
" interest @ 6 % per annum.	

(Part of Exhibit A. H. No. 18.) Albert Harper, examiner.

456 Q. Please produce, if you have them, the receipts for money paid by you for taxes.

A. I have them here, and here produce them.

Q. Please state whether the monies for which those receipts were given were actually paid by you as herein stated.

A. Yes, sir.

Mr. WILSON: We here offer said receipts in evidence, together with a letter of Messrs. Hanna & Johnston concerning said taxes, and the same are herewith filed in evidence and marked, respectively, Exhibits A. H. Nos. 19, 20, 21, 22, and 23.

Q. Please produce, if you have them, the receipt- for all monies

paid by you for insurance on the property described in the bill of complaint in this case.

A. I here produce them.

Q. Please state whether the monies for which those receipts were given were paid by you as therein stated.

A. Yes, sir.

Mr. WILSON: We here offer said receipts in evidence, and the same are herewith filed in evidence and marked, respectively, Exhibits A. H. Nos. 24 and 25.

Mr. MATTINGLY: To which we object as being immaterial and incompetent.

457 Mr. GARNETT: Same objection.

Q. In respect of the other items charged for insurance in the statement already filed in evidence, and which is marked Exhibit A. H. No. 18, please state whether you have any receipts therefor, and whether the sums charged in that statement were actually paid by you for insurance on the said property.

A. The insurance was paid at one time, I think, by Mr. Phillips, and at another time by some other party, and they merely notified me that they had paid the insurance, and sent on to me some memorandum of it. I never had any receipts, and never paid any insurance myself in person. All the payments that I made are on the stubs of my check book.

Q. The items that are charged for by you against Mr. Shepherd are the principal of the notes, the coupon notes, with interest thereon, and the taxes and insurance, with interest thereon. What, is any, other claim have you against Mr. Shepherd? And if any other claim for additional amount was made in any account stated by you, state whether or not the same was made inadvertently or by mistake.

458 A. I did not make out these accounts. My clerk made them out. It will appear that the clerk has charged interest at 9% upon the taxes paid. I knew nothing at all about it. He had the supposition that there was interest on the claim on interest on any sums of money paid; and in the account sent to my counsel, Messrs. Hanna & Johnston, he had charged interest, as I am informed, on that. Of course I disclaim that. I want no interest but what is proper and right; whatever the law will fix. It was an error through his want of knowledge.

Q. Your claim is merely for the principal and interest due on the notes and the taxes and insurance paid, with legal interest thereon?

A. Certainly, and nothing more.

Q. And the interest on the coupon notes according to agreement?

A. Yes, sir.

Q. Please state whether you have examined your papers and can produce all or any of the communications that you received from Mr. Shepherd relative to the interest on the unpaid coupon notes.

A. I have examined my papers, or at least my clerk has, and I find no letters except these two letters dated December 26th and December 29th, 1876.

459 Mr. WILSON: Which two original letters we here offer in evidence, and the same are herewith filed in evidence and marked, respectively, Exhibits A. H. Nos. 26 and 27; and by consent of solicitors for the defendants copies of said letters are here incorporated into this deposition (the originals being returned to the witness), as follows:

"EXHIBIT A. H. No. 26.

"OFFICE OF ALEX. R. SHEPHERD,
"PENN. AVENUE AND 12TH STREET,
"WASHINGTON, *Dec.* 26, 1876.

"T. B. LONG, Esq., ag't for Geo. S. Pepper, Esq., Phila.

"DEAR SIR: I have your favor of the 23d, and in reply will say that in consequence of my recent financial troubles I have had to delay payment of interest due Mr. Pepper, but have no doubt I will be able in a short time to pay up & keep it up.

"Yours truly, "A. R. SHEPHERD.

460 "EXHIBIT A. H. No. 27.

"OFFICE OF ALEX. R. SHEPHERD,
"PENN. AVENUE AND 12TH STREET,
"WASHINGTON, *Dec.* 29*th*, 1876.

"George S. Pepper.

"DEAR SIR: I will agree to pay 9 per cent. interest on overdue interest on mortgages due you by me now due or which may become due.

"Yours truly, ALEX. R. SHEPHERD."

Q. Did you ever receive other letters from Mr. Shepherd between January 1, 1876, and January 1, 1879? And, if so, please state what became of all other letters from him. I mean other than the two which you have just put in evidence.

A. I received several letters from Mr. Shepherd between 1876 and 1879. By reference to papers I find that they were sent to Mr. Phillips or Mr. Cox, who were then my attorneys, at the commencement of the proceedings here. That explains the absence of those letters.

Q. Did you have no other letters in you possession?

A. No, sir; nor did I destroy them, to my knowledge.

Q. State, if you please, what arrangement or agreement was
461 made as to the time when the interest on the loan was to be paid by Mr. Shepherd, and how that agreement was made.

Mr. BRADLEY: Question objected to as incompetent.

Mr. GARNETT: Same objection.

A. Mr. Shepherd defaulted and asked for indulgence, and I gave him indulgence; I do not know how long a time, but the time when he ceased to pay interest will show that. I had friendly feelings

towards Mr. Shepherd and desired to accommodate him. When he asked for further indulgence after a very long period had been afforded him, I stated that I would like to indulge him, but the interest was growing larger and larger, and that I was loosing interest on the interest. Mr. Shepherd at the time stated that he would fully indemnify me and make it to my interest to do it. I said to Mr. Shepherd, I will accommodate you, but name your own time in the future, and let us have it settled. He fixed his own time. I did not name any time for him. I indulged him to a time which I cannot speak from memory. At the time that I gave my testimony in the first suit I then fixed the time at which he agreed to pay up.

462 Mr. HANNA: You testified in the first suit that it was January, 1877?

WITNESS (continuing): It was August first of some year. That letter of Mr. Shepherd's ought to be about. I say August first, 1877, referring back to my testimony in equity cause No. 6201, in order to refresh myself.

Mr. MATTINGLY: Objected to.

WITNESS (continuing): Mr. Shepherd sent me voluntarily a letter agreeing unqualifyingly to pay me interest on the overdue interest and on the interest to become due thereafter at 9 per centum per annum. I made no agreement with him. The only arrangement was that he stated he would pay me. He sent me that letter, and I was satisfied with it and waited until the time arrived (when he stated he would pay), and he did not pay, when I found I could not wait any longer, and I had to proceed for the two years' interest or more. The arrangement was made by correspondence; I never saw Mr. Shepherd.

Mr. MATTINGLY: We object to the statement of the witness giving the contents of letters, unless such letters are produced, as being incompetent.

463 Q. That correspondence, as I understood you to explain, is not in your possession or under your control?

Mr. BRADLEY: Question objected to as leading.

A. It is not in my possession or under my control.

Q. What search have you made or caused to be made for any letters from Mr. Shepherd to you?

A. I have made most diligent search everywhere that they could possibly be under my control, and have not been able to find them.

Q. Please state what, if any, application was made by you or by your direction to Mr. Justice Cox or to Mr. Phillips for the letters.

A. I have been informed by Mr. Hanna after I went home that they had no letters—that is, that he made application to Mr. Justice Cox and others, and that no letters can be found.

Mr. BRADLEY: Answer objected to as incompetent.

Mr. GARNETT: Same objection.

Q. State whether, after you received the letter from Mr. Shepherd dated December 29, 1876, you gave the indulgence requested and did not press the claim for the money due you until after August, 1877.

Mr. BRADLEY: Question objected to as leading.

463½ A. To the best of my knowledge and belief, I did. It would have been my pleasure to do so.

Q. State what, if any, monies have been paid to you in respect of Mr. Shepherd's indebtedness, either on the principal or interest or advances for taxes and insurance, since 1876.

WITNESS: I do not know about the dates.

Mr. WILSON: That is, the date of the last payment.

A. The coupons shows what has been paid and what has not been paid.

Q. Please state what, if any, agreement or arrangement was originally made or made when the loan was first negotiated in respect of interest on overdue coupons or on coupons after they should become due, and with whom that arrangement or understanding was had.

Mr. BRADLEY: Question objected to as incompetent, as the notes must show for themselves.

A. I requested the parties (they were unknown to me) that the deed of trust should be drawn similar to those in use in Chicago and St. Louis, in which the coupons had inserted in them that they should bear a certain rate of interest after maturity. This was omitted and I was dissatisfied, but I had not seen the papers until after I had paid the money, when, of course, I could not have it reminded [remedied]. I was assured that Mr. Shepherd was
464 a man of honor and great financial ability, and that I should be paid promptly, and there was no question about the interest upon interest.

Mr. MATTINGLY: Answer objected to for the same reason.

Mr. GARNETT: And as not being responsive to the question. I unite in and make all of these objections that are being made by the solicitors for the defendant Shepherd.

Q. Who made the first application to you for the first loan of $35,000?

A. Either Mr. Latta or Mr. Kilbourn, of the firm of Latta & Kilbourn.

Q. State, if you please, if the person who applied to you, whether Mr. Latta or Mr. Kilbourn, was you- agent in any way.

A. No, sir; in no way. They positively state that they were not my agents.

Mr. MATTINGLY: Question and answer both objected to as incompetent.

Mr. GARNETT: Same objection.

Q. Please state whether you had at any time any agent in Washington for the negotiations of loans.

Mr. BRADLEY: Objected to as immaterial.
Mr. GARNETT: Same objection.

A. I had not and never had any agent in Washington.

465 Q. State, if you please, the circumstances under which the second loan was negotiated.

A. The application came either from Mr. Shepherd directly or some agent of his, I cannot recollect which, as it has been ten years ago. I agreed to lend the $10,000, I having been informed that Mr. Mattingly was a capable person and was familiar with all those transactions and had been highly commended to me, and stated that if Mr. Mattingly certificate [certified] to the effect that it was all right I would pay the $10,000, and I did so. That is the whole of that transaction.

Q. Who made the application for the $10,000?

A. I cannot tell. It may have come through Mr. Mattingly or Mr. Shepherd himself. I have no correspondence to show it.

Mr. MATTINGLY: The two preceding answers are objected to as incompetent.
Mr. GARNETT: Same objection.

WITNESS (continuing): Of course, if I had known that the first mortgage did not cover the whole property I would not have loaned another dollar.

Mr. GARNETT: Objected to as incompetent.
Mr. MATTINGLY: Same objection.

Q. State what the agreement was and what representations were made to you, at the time the first loan was agreed upon, in

466 respect of the property that was to be covered by the deed of trust securing that loan?

Mr. MATTINGLY: Objected to as incompetent and immaterial.
Mr. GARNETT: Same objection.

A. It was represented to me as being Mr. Shepherd's new house, worth or estimated, I do not know which, maybe one hundred and fifty thousand dollars, with specifications of the contract for woodwork on each of the floors throughout the house, and such details as went to show the value of the house to be such as to make it ample security, more than ample security, for the loan. Nothing was said about the ground, further than that it was the entire property of Mr. Shepherd—situation at the corner of such and such a street.

Q. The inquiry was as to the representations upon which the loan was made?

A. Mr. Shepherd never wrote to me about that.

Q. I understand you to say that it was all of the property covered by the house.

A. Yes, sir; but I had no correspondence or letters from Mr. Mat-

tingly or Mr. Shepherd after the loan was negotiated through other parties. I had nothing to do with Mr. Shepherd.

Q. What relation did the parties with whom you had your conversation in respect of the loan bear to Mr. Shepherd, according to their own statement?

467

Mr. BRADLEY: Objected to as incompetent.
Mr. GARNETT: Same objection.

A. That they represented Mr. Shepherd. They subsequently showed me their books in which they had charged him a commission and a very large commission, too, for distributing the money. Mr. Olmstead showed me the books.

Mr. BRADLEY: Answer objected to for the same reason.
Mr. GARNETT: Same objection.

Q. How did they represent themselves to you?

Mr. BRADLEY: Same objection.
Mr. GARNETT: Same objection.

A. Like all other real-estate men, coming after loans. They were no agents of mine.

Q. Did they represent themselves as being the agents of Mr. Shepherd?

A. Yes, sir; certainly.

Mr. MATTINGLY: Question and answer objected to as incompetent.
Mr. GARNETT: Same objection.

WITNESS (continuing): As far as my recollection goes I think my check to them was drawn to the order of Mr. Shepherd.

Mr. BRADLEY: Answer objected to.
Mr. GARNETT: Same objection.

468 Q. Upon what representations in respect of the property to be covered by the deed of trust did you act in making the first loan?

Mr. GARNETT: Question objected to as being suggestive and incompetent.
Mr. BRADLEY: Same objection.

A. Upon the representations of Messrs. Latta & Kilbourn, the agents for Mr. Shepherd, that it was the entire property, the fine house of Mr. Shepherd, simply all the ground covered by the house. They did not talk about the ground, but said that it was Mr. Shepherd's fine house and described it, with the appurtenances. To mor-gage only part of a house is simply absurd.

Mr. GARNETT: Answer objected to as incompetent.
Mr. BRADLEY: Same objection.

Q. Did you know in what condition the improvements on the land were at the time you made the loan?

A. I did not. I supposed the house to be finished, maybe some little touches about it. I took it for granted that there were some little touches to be made about it. I did not lend money on unfinished property in making loans. It would have been absurd for me to lend money on an unfinished house or only part of a house.

Mr. GARNETT: Answer objected to as incompetent.
Mr. BRADLEY: Same objection.

Q. When did you first learn that the house or part of the house of Mr. Shepherd was on ground not covered by the deed of trust to secure your advances?

A. Through a letter written to Mr. Jessup, a friend of Mr. Shepherd, the date of which I do not recollect, in which he says, "Tell Pepper that if he proceeds in law to collect his money I will fight him, and that his mor-gage does not cover but two-thirds of my property."

469 Mr. BRADLEY: Question and answer objected to as incompetent.
Mr. GARNETT: Same objection.

Q. About what time was that?

A. It must have been a short time prior to my proceedings. I cannot tell. The papers will show the date of the suit.

Mr. WILSON: It was after August, 1877?
WITNESS: Yes; it was after August, 1877.

Mr. HANNA: The bill was filed in April, 1878.

Q. State what, if any, information had been given to you, or what suspicion you entertained prior to receiving the information you have just spoken of, that the deed of trust did not cover all of the ground on which the house was situated.

Mr. GARNETT: Question objected to as immaterial and incompetent.
Mr. BRADLEY: Same objection.

A. None, certainly, except that Mr. Shepherd knew that, and that he took me by surprise and thought to check me in my proceedings.

Mr. BRADLEY: Answer objected to as immaterial and incompetent.
Mr. GARNETT: Same objection.

Q. Would you have made either of the loans described in these proceedings if you had any knowledge or information or suspicion that the building occupied ground not covered by deed of trust?

A. No, sir; I would not have loaned him a dollar of my money.

470 Mr. GARNETT: Question and answer objected to as incompetent.
Mr. BRADLEY: Same objection.

WITNESS (continuing): The abstract of title showed that.

Mr. BRADLEY: We object to that as incompetent.

Mr. GARNETT: Same objection.

Q. The deed of trust to secure your loans omitted the ground upon which the rear of the house stands, as is now admitted. Please state in what respect that was in violation of or a departure from the original agreement in respect of the loans.

Mr. MATTINGLY: Question objected to as incompetent.
Mr. GARNETT: Same objection.

A. I made the loans upon the entire property, as I believed and as I supposed Mr. Phillips testified to the fact that I requested him to examine and see whether the loan covered the whole property and whether it was the first loan, etc. I thought I had his certificate to that effect, but when I learned from Mr. Shepherd and come to investigate I found that Mr. Shepherd's agents had asked for an abstract of the whole property, and an abstract was furnished showing that the north part of the lot was defective in title.

Mr. MATTINGLY: Answer objected to as being hearsay and incompetent and not responsive to the question.
Mr. GARNETT: Same objection.

Q. In what respect was that different from the agreement?
A. They left the lot out. I was only explaining it. The lot was left out, which was the bargain.

471 Mr. MATTINGLY: Question and answer objected to as incompetent.
Mr. GARNETT: Same objection.

Q. When did you first discover that the defendant, Mrs. Mercy Maria Gray, had a deed of trust on the ground covered by the rear part of the house?
A. I do not know the date; Mr. Johnston told me the date; I cannot tell, but it was subsequent to the bringing of the suit.
Q. It was after you begun your suit?
A. Yes, sir; it was after my suit was begun that I knew she had an interest at all.
Q. State whether you were informed that Mrs. Gray took her deed of trust with the knowledge that your deed covered both lots and was intended to cover them.

Mr. GARNETT: Question objected to as incompetent.
Mr. BRADLEY: Same objection.

A. I learned it from my attorneys, Messrs. Hanna & Johnston.
Q. When did you learn that?
A. I cannot tell; they know.
Q. It was after you filed your bill in April, 1878?

Mr. GARNETT: Objected to as leading and incompetent.
Mr. BRADLEY: Same objection.

A. Yes, sir.

Mr. GARNETT: Answer also objected to.
Mr. BRADLEY: Same objection.

472 Q. When did they tell you with reference to the time of the filing of the bill in your suit?

A. It was after my suit was commenced. I never heard of Mrs. Gray before that.

Q. Whatever information you obtained in respect of Mrs. Gray's deed of trust you obtained from Mr. James M. Johnston, of the firm of Messrs. Hanna & Johnston, your attorneys?

A. Yes, sir.

Mr. GARNETT: Question and answer objected to as incompetent.

Mr. BRADLEY: Same objection.

Q. And the knowledge which she had or was supposed to have with reference to the prior deed of trust, you received that from Mr. Johnston?

A. Yes, sir.

Mr. GARNETT: Question and answer objected to as incompetent.

Mr. BRADLEY: Same objection.

WITNESS (continuing): I was told by friends that Mrs. Gray was aware that her claim came entirely after mine. Mr. Smith told me that.

Mr. GARNETT: Objected to as hearsay and incompetent.

Mr. BRADLEY: Same objection.

Q. The first information that you had in relation to Mrs. Gray's knowledge of any prior deeds of trust was received by you from Mr. Johnston, of the firm of Hanna & Johnston?

473 A. Yes, sir; I did not know that she had any claim to the property until after the suit was begun.

Mr. GARNETT: Question and answer objected to as incompetent and immaterial.

Mr. BRADLEY: Same objection.

Cross-examination by Mr. MATTINGLY:

Q. Who made out Exhibit A. H. No. 18, being a statement of your claim against Mr. Shepherd?

A. My clerk did.

Mr. HANNA: No, that was made out in my office.

WITNESS: It was made out by my counsel, here in their office.

Q. Have you examined it?

A. I forgot whether I have or not.

Mr. HANNA: Yes, you have.

WITNESS: It has been a long time ago. Did you examine it in connection with your books?

Mr. HANNA: I made that copy from the data in the case.

A. I furnished the items by which Mr. Hanna made out that statement.

Q. What did you furnish the items from?

A. From my books, I believe.

Q. Did you have your books on here when you gave the items to Mr. Hanna?

474 A. I cannot tell; my books were here ten years ago.

Q. Was this Exhibit A. H. No. 18, made out ten years ago?

A. No, sir. How many years ago was it? (Witness addressing himself to Mr. Hanna:) It was eight years ago, or something like that.

Mr. HANNA: Mr. Pepper, the paper to which Mr. Mattingly is directing his question is the memorandum of account made up when you were here a few days ago.

Q. Did you have your books with you when that memorandum was made up a few days ago?

A. I think not. I brought here a transcript from my book.

Q. By whom was that transcript made out?

A. By my clerk, who is a competent person. If there are errors in it they will show for themselves.

Q. Among the tax receipts filed in evidence by you is a receipt for taxes for the year 1877, amounting to $981.85, being marked Exhibit A. H. No. 20, which shows on its face that it was paid by drawback. Please state what amount in cash was paid in settlement of that bill.

WITNESS: Mr. Hanna will show it; he paid it.

Mr. MATTINGLY: I want an answer from you.

A. He paid the taxes for me. You can go and demand

475 that of him, not of me. I- they are not proper vouchers for payments they will not be paid.

Q. Did you make any personal search for the correspondence had between you and Mr. Shepherd?

A. Yes, sir; most diligence search, and I was very anxious to find them. I will give you one thousand dollars to find them for me.

Q. You made a personal search for them?

A. Yes, sir; a most diligent search, and was most anxious to find them.

Q. Whereabouts—in Philadelphia?

A. In Philadelphia, at every and all places where they could have been deposited by me.

Q. You stated in your direct examination that your clerk searched for your papers?

A. Yes, sir; he did, because I could not find them, and I being old and being apt to overlook them I set him to work searching for the papers.

Q. When you received Mr. Shepherd's letter of December 29, 1876, being Exhibit A. H. No. 27, with reference to the interest on the overdue interest, did you accept his offer?

A. In this way I accepted it, that I did not proceed. I asked him when he proposed paying me interest on interest, so that I should not loose by delay. I said, I will indulge you, but you must

476 name a time; and when that time arrived and there was no application for a further extension and no explanation or apology or promise, then I threatened to proceed.

Q. You never saw Mr. Shepherd personally?

A. No, sir.

Q. All this was by correspondence?

A. Yes, sir.

Q. That correspondence you turned over to Mr. Phillips?

A. I think so, or to Mr. Cox. When the suit was commenced I put all the papers connected with the matter in their hands, so that they might be fully enabled to understand it.

Q. Is that your signature (handing to the witness his deposition in equity cause No. 6201)?

A. Yes, sir.

Q. I will read to you the 13th interrogatory in that deposition and your answer thereto:

Q. 13th. "Had you any agreement with A. R. Shepherd as to payment of interest on the instalments of interest in arrears?"

A. "When I represented to A. R. Shepherd that by his default in payment of interest I necessarily incurred loss and inconvenience he sent me a memorandum stating that he agreed to pay interest on the overdue interest, but there was no promise or agreement, expressed or implied, that I should not proceed to collect both interest and principal of my loans in consideration of the agree-
477–479 ment offered by A. R. Shepherd to pay interest of the overdue interest." Please state whether that is correct.

A. It is correct, in so far as any written agreement was concerned.

Q. You had no verbal agreement with him; personally you never saw him?

A. If a gentleman proposes a thing to you you accept it by inquiring what he asks. That is the equivalent. The consideration was that I should not proceed, and I did not proceed.

Q. You say here (referring to deposition of witness in equity cause No. 6201) that there was no promise or agreement, expressed or implied, on your part that you would not proceed to collect both interest and principal?

A. I do not exactly understand what that would signify to Mr. Shepherd. I made no agreement. I did not give him any writing, but the verbal promise was that I would not proceed, but when he sent that to me I just ceased proceedings; that is all, and I gave him indulgence for that length of time.

Q. You still claimed the right to proceed if you saw proper to do so?

A. I should suppose that I would have the right. I did not know that any agreement, unless in writing, would preclude me.

Q. You had no agreement, expressed or implied, that you should not proceed to collect your claim?

480 A. I used language there probably under apprehension that an effort would be made to establish usurious interest on my claim or demand for interest on interest when there was no agreement in the original contract. That was all that I w-ote to him. I made no positive agreement with him. I did not claim the interest on interest, but he volunteered to pay me that.

Q. But you stated here (referring to said deposition of witness) that there was no agreement or promise, expressed or implied, on your part that you should not proceed to collect both interest and principal, etc., etc. I suppose that your recollection was fresher then than now?

A. If I did say so, I did; but I did not proceed, and it shows that I did not act. Mr. Shepherd would not have given me this agreement unless he received what he considered a consideration, for I did require it of him, but it was voluntary on his part.

Q. Who is Mr. Jones, in Philadelphia?

A. He was a real-estate agent and broker. He is now a confirmed invalid, and has not attended to business for years. He is still living, I believe.

Q. Did he not first apply to you to make this loan?

A. No, sir; he applied to me first for a loan for Mr. Kil-
481 bourn, as far as I recollect, and that is the way I became acquainted with Mr. Kilbourn.

Q. Did Mr. Jones have anything to do with these loans?

A. I think not with the Shepherd's loans.

Q. Did you loan money through Mr. Jones?

A. Yes, sir; there was an application from Mr. Kilbourn for his own house, which is the first loan I made.

Q. Did you make these loans through Mr. Jones?

A. No, sir; I do not know whether I made any other loans through him or not.

Q. Did Mr. Jones get any part of the commission for making these loans to Mr. Shepherd?

A. I think not, as he had nothing to do with them.

Q. Did you make any claim that he should?

A. No; certainly not; whether he made any claim himself I do not know. I never supposed that he was entitled to any.

Q. Did you make any other loans in this city through Messrs. Kilbourn & Latta?

A. I am not certain but that I did make a loan to Mr. Cluss. I am not positive.

Q. Did you make a loan to John O. Evans?

A. I do not recollect.

Q. Do you remember whether or not you made any other loan through Messrs. Kilbourn & Latta?

A. I do not think I did. I do not recollect. They may
482 have, as I cannot trust to my memory. I can write to you when I get home if I did.

Q. Did you receive any part of the commission made on loans through Mr. Jones?

A. I never received any commission from anybody for anything, except when I act as executor of estates. Of course I would despise any such proposition. Mr. Jones is a poor man and wanted all the money himself. I never received any commission on any loan that I made here or elsewhere.

Q. Please look at these seven letters and state whether they were written by you (handing papers to witness).

WITNESS: Mr. Hanna, where did they come from?
Mr. HANNA: They are exhibits in the other case.

A. I believe those to be my letters, sir.

Mr. MATTINGLY: Solicitors for the defendants here offer said seven letters in evidence, and the originals thereof are here filed in evidence, and marked, respectively, Exhibits A. H. Nos. 28, 29, 30, 31, 32, 33, and 34, and by consent of the solicitors for complainant copies thereof are here incorporated into these deposition- as follows:

EXHIBITS A. H. No. 28.

"MAY 26, '74.

"Messrs. Kilbourn & Latta.

483 "GENT'N: I beg that you will have all matters relative to the loan to Mr. Shepherd arranged in such manner as shall be most satisfactory to me, so that I may not have reason to ask for any further action in the premises. When Mr. Phillip shall be entirely satisfied he will please send the papers for my inspection, so that I may be prepared to advance the money when required. I do not want the Williams loan. Please ascertain whether Mr. Evans desires to borrow $28,000 on his three houses at 9 per ct. for 5 years, &, if so, I will endeavor to effect the arrangement for him.

"I desire that loans made by me be arranged with coupons for the interest, as is invariable done in St. Louis and Chicago. I believe that I mentioned this matter to you when we last met in this city. I cannot imagine any objection to this mode of arrangement, which has met with almost universal approbation throughout the Union.

"Please let me hear from you at your earliest convenience.

"Yours resp'y, GEO. S. PEPPER,
"631 *Walnut St.*

484 "P. S.—I beg that you will carefully attend to the matter of insurance & remit me the policies.

"G. S. P.

"May 26, '74."

EXHIBIT A. H. No. 29.

"Messrs. Kilbourn & Latta:

"I have not yet rec'd any policies of insurance to accompany loan to Mr. Kilbourn. The policies accompanying the loan to Mr. Shepherd are but for one year & are not assigned to me. Will you please give this matter your attention at your earliest convenience.

"I wrote you yesterday relative to the loans, 39,000 to Mr. Evans, & await your reply.

"Yours resp'y, GEO. S. PEPPER.

"P. S.—Please state whether or not you consider that Mr. Jones is entitled to share your commissions on all loans made by me

through you, even such loans as have never been even subjected to his consideration or knowledge."

EXHIBIT A. H. No. 30.

"Messrs. Kilbourn & Latta.

"DEAR SIRS: I received this morning the deed of trust accompanying the loan to Mr. Shepherd.

"I was disappointed on not rec'g the papers relative to the
485 loans to Mr. Evans for ac. of L. S. Pepper & G. S. Pepper, which were promised some days since. I sincerely trust that there will not be any further delay, as we are anxious to close this matter. The agreement with Mr. Evans was for the loan of 39,000, & not simply for 20,000.

"Expecting to hear from you at an early date,

"Resp'y yours, GEO. S. PEPPER.

"Rec'd June 16, '74."

EXHIBIT A. H. No. 31.

"Mr. Hallet Kilbourn:

"Some days since I wrote you that I have recorder's rec't dated Mar. 24, '75, A. R. Shepherd to Bradley & Mattingly, which I believe relates to the deed of trust on the $10,000 loan, which deed of trust I cannot find among my papers & I believe has never been in my possession. Will you be so kind as to inquire into this matter? Upon consulting my papers I find that the renewal of insurance on Mr. Shepherd's house is only for $20,000, whereas the former insurance was for $25,000. How is this? As Mr. Shepherd is determined not to pay the interest due, I fear that I shall be reluctantly compelled to proceed against his house unless you can collect it without recourse to such proceedings.

486 "Please write me your opinion as to the course I should pursue in this disagreeable matter & much oblige

"Yours resp'y, GEO. S. PEPPER.

"Dec'r 27, '75."

EXHIBIT A. H. No. 32.

"JULY 24, '74.

"Messrs. Kilbourn & Latta.

"GENTS: I hasten to reply to your favor — July 20th. I have been absent from the city. As it would be necessary that I realize funds, in order to make loans at this time, I do not think it advisable to incur any particular trouble in order to effect such a loan as proposed by Mr. Shepherd. As stated to you in our recent interview, I expect in all future loans to obtain very large margins, so as to be perfectly secure against all possible shrinkage of values in real estate which might follow return to payments in coin, etc. I regret not to be able to accommodate Mr. Shepherd, but trust that he can easily find some other party to take the loan.

"Yours resp'y, GEO. S. PEPPER."

487 EXHIBIT A. H. No. 33.

"Mr. Hallet Kilbourn.

"DEAR SIR: I am much obliged by your kind favor in reply to my inquiries relative to the insurance on Mr. Shepherd's house. I have examined the policies in my possession, and find as follows:

"National Metropolitan Fire Ins. Co., D. C.: Policy No. 1831, dated June 1, 1874, for $5,000. Expired June 1, 1875.

"Insurance Co. North America, Philad'a: Policy No. 2056, dated June 1, 1874, for $10,000. Expired June 1, 1875.

"Home Ins. Co., New York: Policy No. 4458, dated June 1, 1874, for $10,000. Expired June 1, 1875.

"Two other policies for $5,000 each, expiring some time during this year, as collateral upon the supplementary loan."

"Please inform me whether or not some indorsement on these expired policies is not necessary if the insurance be extended; or has Mr. Shepard taken out new policies?

"These are all the policies held by me, & I naturally con-
488 cluded that the expired policies were of no value & desired to obtain from Mr. Shepherd the new policies, which I suppose had been issued to him. I should be very much obliged by any information you may send me on the subject of insurance in Washington, which appears to differ from the mode practiced in this city.

"Begging that you will excuse me for troubling you with my troublesome affairs, hoping to see you e'r long,

"In haste, yours truly, GEO. S. PEPPER,
"631 *Walnut St., Philad'a.*

EXHIBIT A. H. No. 34.

"Mr. Kilbourn.

"DEAR SIR: Your favor of the 15th inst. was rec'd on Saturday, & I will say that I will lend Mr. Shepherd $35,000 on his house now nearly completed, for 5 years or longer, at 9 p'r ct., at which rate I am offered the very best loan in Chicago. I would be pleased to arrange a loan with Mr. Shepherd could we agree upon terms. I hold a loan for $30,000 in St. Louis, which matures in a few days & which the borrower much desires to extend & would doubtless pay 9 p'r cent. if I would agree to continue the loan.

489 "In regard to the proposed loan for Mr. Evans, I am under the impression that you once offered the same houses as security for about $8,000 each or $50,000 for the six. I do not think the security or the rate of interest satisfactory. I shall probably have some more money to invest, and should be pleased to place it in Washington could I find all things satisfactory. As I am offered very satisfactory terms for temporary loans (*i. e.*, for 3 or 4 mos.), which I shall accept unless I find investments in Washington, I should be pleased to have a- early reply to this letter, so that I may

be able to decide promptly. It is probable that I may be in your city this week, but will notify — of my coming should I decide to go.

"Yours resp'y., GEO. S. PEPPER,

"631 *Walnut St.*

"May 18, '74."

Q. Did you ever make any personal examination of any other property in this city on which you loaned money?

A. I do not think that I ever saw any property to my knowledge upon which I made loans before the loans were made. The last loan I made on "The Richmond" I never saw the property.

490 To the best of my knowledge, I never saw any property in Washington upon which I made loans until after the loans were made; in fact, I had never been to Washington in my life until after my suit was begun.

Q. Did you rely upon the statement of Messrs. Kilbourn & Latta as to the value of the property upon which you made loans through them?

A. Entirely as to those loans to Mr. Shepherd, I did. I cannot recollect about the others.

Q. When you advanced the $35,000 how was that money paid?

A. By check to Mr. Shepherd's order, which was exhibited here. I had it here yesterday.

Q. To whom were the deeds of trust delivered?

A. I presume the first one was delivered to Mr. Phillips, and the other one you know all about—that is, the second one — or may be it was somebody else; Mr. Bradley may have been the one, or some one. I do not know; he was the trustee. They were delivered to the trustee.

Mr. MATTINGLY: I was a trustee under one of the trusts.

WITNESS (to Mr. Mattingly): You have the papers I wrote you particularly, and I have no doubt that you have my letters. I will be glad if you will produce that letter in reference to the loan of $10,000, and that will be decisive of the question. I reposed the greatest confidence in Mr. Mattingly.

491 Q. Did Messrs. Kilbourn & Latta have the deeds recorded?

A. I cannot recollect; but I had nothing to do with the recording. I supposed you had them recorded, but I do not know.

Q. Did I have anything to do with the first loan?

A. I think not; not to my knowledge. I had not heard from Mr. Shepherd until after Mr. Jessup spoke of it. You may have had something to do with it; I do not recollect. You ask me about things that transpired ten years ago, which I cannot recollect.

Q. Who prepared that $35,000 deed of trust?

A. I have been informed that it was prepared by some person in the employment of Messrs. Kilbourn & Latta, but a gentleman in Philadelphia told me Mr. Bradley said he had drawn it up.

Mr. BRADLEY: I say that I never saw or heard of either deed of trust until long after they were prepared.

WITNESS: It was drawn up by somebody in whom I reposed entire confidence. I do not know who drew it up for me.

Q. Did you examin- the abstract of title before advancing the money?

A. I did not see it. Mr. Phillips was examining the whole matter and passed upon it. I could not know anything about
492 the abstract, because it was by met-s and bounds, and I did not know anything about the house. For all I know, it may have been one-half of the lot or one-third of the lot or the whole of the lot.

Q. Did you send the $35,000 and $10,000 checks to Messrs. Kilbourn & Latta before you received the papers?

A. I cannot recollect whether I did or not. It is possible that I may have sent them, as they were drawn to Mr. Shepherd's order.

Q. Did not you request them to have the title examined?

A. I did. The agreement was made that I was to be furnished with a brief title showing the property to be clear of all encumbrances. My lien was to be the first one on the premises, covering the whole property.

Q. You relied upon Messrs. Kilbourn & Latta doing that, did you not?

A. I certainly did, subject to the supervision of Mr. Phillips, acting as attorney, because they were not attorneys. Mr. Phillips was my attorney.

Q. I understand you to say that you never saw Mr. Shepherd personally?

A. No, sir. If Mr. Shepherd saw me he got the advantage of me. I do not think that Mr. Shepherd and I were ever in Washington at the same time. I was very anxious to see him here once.

Q. Do you remember to whom you sent the check for $10,000?

493 A. I do not remember; but I suppose that I might have sent it to either you or Mr. Kilbourn or Mr. Latta. I cannot tell which. I do not recollect.

Q. After these loans were made did you consult with Messrs. Kilbourn & Latta about the indulgence as to the collection of interest?

A. I do not know that I ever did. I never consulted with them about anything, so far as I recollect. The property was insured from year to year, and at the expiration of each year somebody paid the insurance for me and sent to me for the money. All the agreements that I made with Mr. Shepherd is in that deed of trust. There was no other seperate agreement.

Q. After the deed of trust was executed——

WITNESS (interrupting): I had nothing to do with Messrs. Kilbourn & Latta except about the default of interest on the part of Mr. Shepherd. I had no other business with them about Mr. Shepherd.

Q. Did you consult Messrs. Kilbourn & Latta as to whether the insurance was renewed?

A. That I cannot tell; it is a possible thing that I may have, as

stated in one of those letters put in evidence by you; but I do not know.

Q. Do you remember whether you consulted them about the payment of interest when in default?

494 A. I never consulted them. I might have told them that the interest was not paid; but that was all. I do not exactly see the drift of your questions. If you will explain them to me I will be able to tell you more than I am able now to do. Mr. Kilbourn was no agent of mine, and did nothing for me as agent. He disclaims that. Mr. Smith repeatedly asked me to constitute him my agent here, but I declined, and stated that I did not want any agent.

Q. In your answer to the 15th interrogatory of your deposition in equity cause No. 6201 you state that "application was first made to me by E. R. Jones, sent by H. Kilbourn from Washington, and the papers were drawn by persons, as far as I can recollect, selected or recommended by Kilbourn, as also the counsel for examination of titles, etc." Please state whether that is correct.

A. That is an error. I have learned that that is an error. I went to Messrs. Latta & Kilbourn, and I found that Mr. Jones introduced Mr. Kilbourn to me, and I asked Mr. Kilbourn if he knew any one who wished to borrow any money, and he said that he thought a friend of his, Mr. Shepherd, in Washington, might borrow some money, and that he would see him when he got back to Washington and let me know, and he wrote to me. I was

495 introduced to Mr. Kilbourn by Mr. Jones. You asked me a question awhile ago about Mr. Jones making a claim for part of the commission. That revives my recollection. Mr. Jones thought that he was entitled to part of the commission for the reason that he introduced Mr. Kilbourn to me. I says to Mr. Jones: "Because you introduced a gentleman to me, if ever thereafter I make loans through that gentleman do you expect to get part of the commission?" And he said yes, sir. Mr. Jones thought that, by having introduced Mr. Kilbourn to me, that ever after that if I made loans to Mr. Kilbourn he was entitled to part of the commission.

Q. You state in this deposition (referring to deposition of witness in equity cause No. 6201) that application was first made to you by E. R. Jones.

A. That is a mistake.

Mr. MATTINGLY: That is all that the solicitors for the defendant Shepherd have to ask this witness.

Mr. GARNETT, solicitor for the defendant, Mrs. Mercer Maria Gray, waives cross-examination of this witness.

Redirect by Mr. WILSON:

496 Q. You refer in your examination to Mr. Kilbourn. Do you mean Mr. Kibourn or Mr. Latta?

A. It was a long time ago, and I do not now know which one it was; it was either one; I believe the first person I saw was Mr. Latta.

Q. Mr. Kilbourn was not there?

A. I do not remember whether it was Mr. Kilbourn or Mr. Latta.

Mr. BRADLEY: Which one did you see, Mr. Latta or Mr. Kilbourn?

WITNESS: I cannot tell you.

GEO. S. PEPPER.

Subscribed and sworn to before me this 23d day of Sept., A. D. 1884.

ALBERT HARPER, *Examiner.*

(Adjourned until Tuesday, March 18, 1884, at 12.30 o'clk.)

TUESDAY, *March 18th*, 1884—12.30 o'c'k p. m.

Met pursuant to adjournment.

Present: Mr. Hanna for complainant, Mr. Garnett for defendant Gray, and the examiner.

Whereupon Mr. Hanna, as solicitor for complainant, calls upon Mr. Garnett, solicitor for defendant Gray, to produce the original letter of which A. H. No. 2, filed herein, is a copy.

497 Thereupon adjournment is taken until Thursday, March 20th, 1884, 3.00 o'clock p. m.

ALBERT HARPER, *Examiner.*

THURSDAY, *March 20th*, 1884—3 o'clock p. m.

Met pursuant to adjournment.

Present: Solicitors for respective parties, and the examiner.

It is agreed by the solicitors for the respective parties that the copy from the books of Messrs. Kilbourn & Latta of entries therein, as appears in the deposition of John F. Olmstead, taken in Cause No. 6201, on December 24th, 1878, may be considered as — correct transcript from said books and as filed and read in evidence in this cause, which entries are as follows:

Entries.

Page 458–9:

June 3, 1874. Cash, to Geo. S. Pepper.
June 3, 1874. Received from him for Shepherd loan, $35,000.00.

Geo. S. Pepper. Loan ac.:

For the note of A. R. Shepherd, dated June 1, 1874, payable five years, int. 9%, payable semi-annually (ten coupon notes for $1,575 each), secured by deed of trust on part of lot 2, square 164, $35,000.00.

Loan ac. to A. R. Shepherd:

For above-described note of A. R. Shepherd, $35,000.00.

498 A. R. Shepherd to sundries:

Commissions on Pepper loan	1,000	
Int. on Barry order	8 75	
		$1,008 75
Am't bro't for'd		1,008 75
John Stearns		1,159 10
Kilbourn, Latta & Olmstead		2,324 85
H. Kilbourn		60 65
Cash p'd John O. Evans (ch'k 157 R.)		12,000
do. " him to bal. ac. (ch'k 156 R.)		18,427 40
		$34,998 75

On page 528:

MARCH 24, 1875.

Loan ac. to A. R. Shepherd:

For his note dated Mar. 22, '75, & paym't in 5 y'rs, int. 9 %, pay't semi-annually, secured on p't lot 2, sq. 164, $10,000.00.

George S. Pepper to loan ac.:

For above note of A. R. Shepherd, ins. policies for $10,000, A. C. Bradley & W. F. Mattingly, trustees, $10,000.00.

A. R. Shepherd to sundries:

Cash p'd for recording deed of trust, 2.50		2 50
George S. Pepper, for his check to the order of Shepherd		$10,000 00
Commission ac.—comm's on loan	250	
M. Ashford, ex'g title	20	
		270

499 Mr. BRADLEY: To which solicitors for the defendant Shepherd object as immaterial and irrelevant.

Mr. GARNETT: Solicitor for defendant Gray makes the same objection.

Mr. HANNA: Solicitors for the complainants call upon Mr. Garnett for the letter referred to in the last session.

Mr. GARNETT: I have looked for that letter and cannot find it; but from the information that I can gather I believe that the letter-press copy of said letter already filed in evidence in this cause is a correct copy of said letter.

Mr. HANNA: We then re-offer said letter-press copy of said letter here in evidence.

Mr. GARNETT: To which I make the same objection, as though the original of said letter were in evidence, as being immaterial and irrelevant.

Mr. BRADLEY: Same objection.

Whereupon JAMES M. JOHNSTON, being produced as a witness of lawful age -or and on behalf of the complainants and being first duly sworn, deposes and says:

From my long association with this litigation there are one or two facts of which I am cognizant and as to which my testimony has been asked.

500 I argued the case No. 6201 when it came for final hearing before Mr. Justice MacArthur. Col. Totten, who appeared for the defendant, insisted upon the objection made in the answers of one or more of the defendants of the want of proper parties to the bill in that case. Mrs. Gray, then Mrs. Carter, was not a party to that bill, nor were the trustees in the deed of trust securing her.

When Mr. Justice MacArthur stated that it was his opinion that the point was well taken because all lienors were necessary parties, as if the bill was strictly a foreclosure proceeding. He thereupon declined to give any further order than the one subst-uting a trustee in the place of Mr. Bradley, with the result now known.

I have been shown some testimony given by Mr. Pepper a few days ago in this cause, in which he states that he received certain information through me or through the firm of Hanna & Johnston with respect to information given to Mrs. Gray at the time her mortgage on the property in controversy was given. I called to see Mr. Fitch at his office on one occasion and spoke to him with reference to this case. He then informed me of the fact, of which I was not up to that time cognizant, that some of Mrs. Gray's friends had been blaming him because he had advised Mrs. Gray to ac-

501 cept a second mortgage on the Shepherd house in lieu of another mortgage (I do not know whether it was a first mortgage or not) which she then held upon some other property of Mr. Shepherd's.

Mr. Fitch seemed to be a good deal annoyed and told me that he had not counselled any such proceeding; and thereupon, to show what advice he had given to Mrs. Gray, produced a letter book of his own motion and showed me the letter, which has been already offered in evidence, written by himself to Mrs. Gray.

(Mr. GARNETT: I object to that as immaterial and inadmissable.)

WITNESS (continuing): He also talked to me at considerable length on the subject. I did have occasion to write to Mr. Pepper; and I find, upon looking at our letter book, that in a letter to him dated July 12th, 1881, I used this language——

(Mr. GARNETT: Objected to as immaterial and inadmissable.)

WITNESS (continuing): And now read from my letter-press copy book of date July 12th, 1881, as follows: "In conversation with Mr. Fitch it became quite apparent that Mrs. Gray supposed when she got her deed of trust that your deeds included the rear lot, so that she is probably a purchaser with notice." This is the letter,

502 I presume, to which Mr. Pepper refers in his testimony, as it was about the date of this letter that I spoke to Mr. Fitch. If I informed Mr. Pepper of this conversation at an earlier date I have — recollection of that fact, nor do I find any reference to any such information sent to him in any earlier letter from me or from our firm to him.

With reference to certain letters which passed between Mr. Shepherd and Mr. Pepper, and, possibly, Messrs. Kilbourn & Latta, and one or both of those gentlemen, I wish to state that I have no personal knowledge of having seen the letters, and we have caused search to be made in our office and are unable to find any such letters relating to the negotiation of either of those loans between Mr. Shepherd and Mr. Pepper or in relation to any other matters whatever. I do not think that we have seen any letters which have passed between those parties. I have inquired also of Judge Cox, who was formerly Mr. Pepper's counsel, and he informed me that all the papers which he had were turned over to us or turned over to Mr. Pepper, and that he has none. I also caused search to be made of the papers of Col. William H. Phillip by Mr. Charles Fowler, in whose possession his papers now are, and no such papers can be found.

503 Mr. BRADLEY: Counsel for Mr. Shepherd objects to so much of Mr. Johnston's deposition as relates to the conversation with Mr. Fitch and to the letters in that connection, and also to what transpired at the hearing of cause No. 6201, as being incompetent and immaterial.

Cross-examination by Mr. GARNETT:

Q. Did not Mr. Fitch attend an examination at your request as a witness in this cause?

A. We requested him to come here and be sworn as a witness.

Q. Did you have a conversation with him after he came to your office with reference to this letter which has been put in evidence—I mean the letter of April 18th?

A. I had a conversation with him in reference to his testimony, and I have no doubt that I did refer to that letter.

Q. Was not the conversation with Mr. Fitch in reference to the term used in that letter "second mortgage," referring to the whole or part of the Shepherd lot?

A. I do not recollect that Mr. Fish stated that. What he did state to me at the second conversation at my office was that (and, as I recollect, this was the whole of it) after sending that letter to Mrs. Gray he caused the title to be examined, as he in that very letter
504 advises her it should be done, and upon that examination being made he discovered that the first trust only covered the front lot and that Mrs. Gray bought upon the abstract, which showed the rear lot to be free.

Q. You mean to say that he told at the time that Mrs. Gray knew that the rear lot was free?

A. He told me at the conversation at my office that between the date of that letter and the record of the mortgages he had learned through the abstract of title which she had prepared that the rear lot was not included in either of the Shepherd trusts.

Q. You speak of the record of the mortgage. Did he tell you at the time that previous to the taking of the mortgage she learned that?

A. Yes, sir; that is what he meant—that is, at the conversation at my office.

Q. Of course Mr. Fitch was there and ready to testify?

A. Yes, sir; but I did not put him on the stand.

Q. You did not swear him after that?

A. No, sir.

Q. You excused him from attendance. You told him you did not want him any further as a witness on that day?

A. Yes; of course.

Q. Why was it, then, that you excused him at that time, and then prove that letter by another member of the firm while Mr. Fitch was out of town?

505 A. At the time he came down here it was not with the view of proving simply the letter; but I expected him to say what I have repeated and what I distinctly recollect he had told me, namely, that Mrs. Gray took that mortgage upon the assumption that it was a second mortgage upon the whole of the property, and it was because he changed his statement, from my clear recollection of what he said to me in his office a year or two ago, that I did not put him on the stand.

Subsequently, upon thinking the matter over, I became satisfied that the letter was a very important element of proof, and went to Mr. Fitch's office to get him to prove it, and only upon Mr. Brown's statement that he would be absent for some little time (several weeks, I think) we put Mr. Brown on the stand. I wish to state that I did not intend to take advantage of Mr. Fitch's absence, nor did I put Mr. Brown on the stand until it was discovered that Mr. Fitch could not be reached.

Q. You stated that your recollection is that he told you at his office it was a second mortgage. Did not he tell you, when you had the conversation with him at your office, that the abstract

506 had been made subsequent to the writing of the letter?

A. I do not remember that he said that. The impression left on my mind by the conversation with Mr. Fitch was that she had no idea when she took her mortgage that she had any rights over Mr. Pepper.

Q. That was the impression made on your mind at the office of Mr. Fitch?

A. Yes, sir.

Q. Your recollection is that he first mentioned this matter of the abstract at your office, so far as you remember?

A. I am very sure that if he said anything about the abstract at his own office he did not say that an inspection of that abstract by Mrs. Gray changed her understanding of the situation.

Q. So far as your recollection goes, the abstract was first mentioned in your office?

A. I do not remember it being mentioned before.

(Adjourned until Monday, at 1 o'clock p. m.)

JAMES M. JOHNSTON.

Subscribed and sworn to before me this 16th day of May, A. D. 1884.

ALBERT HARPER, *Examiner.*

Mr. GARNETT: Solicitor for the defendant Gray says that
507 he had in his possession the original letter, of which Exhibit A. H. No. 2 in this cause is a copy, but that he is unable at this time to find it.

ALBERT HARPER, *Examiner.*

MONDAY, *March 24th*, 1884—1 o'clock p. m.

Met pursuant to adjournment.

Present: Solicitors for complainant; also the examiner; the solicitors for the defendants being absent.

Mr. HANNA: Solicitors for complainant here offer in evidence unpaid bills for taxes for the years 1881, 1882, and 1883 on part of lot 2, square 164, being the property described in the deeds of trust mentioned in the bill of complaint in this cause, and the same are herewith filed in evidence and marked, respectively, " Exhibits A. H. Nos. 35, 36, and 37."

Thereupon adjournment is had until Thursday next, March 27th, 1884, at 3.00 o'clock p. m.

ALBERT HARPER, *Examiner.*

THURSDAY, *March 27th*, 1884—3 o'clock p. m.

Met pursuant to adjournment.

Present: Solicitors for respective parties; also the examiner.

508 Whereupon it is admitted by solicitors for all the parties that the defendant, Alexander R. Shepherd, and that James M. Latta have been residing out of this jurisdiction since before the filing of the bill in this cause, and are still living out of this jurisdiction, the defendant Shepherd in Mexico and the said James M. Latta in one of the States.

Thereupon solicitors for complainant announce the testimony in this cause closed.

ALBERT HARPER, *Examiner.*

Short copy.

Clerk's Office, Supreme Court of the District of Columbia.

GEORGE W. UTERMEHLE
vs.
ALEXANDER R. SHEPHERD and MOSES KELLY. } No. 16981, Docket.

1877, Oct. 23. Judgment for plaintiff for---------- $10,000 00
And costs of suit----------
" " 30. *Fi. fa.* issued; ret'd Oct. 31, '77, *nulla bona.*
" Nov. 10. Judg't *vs.* Shepherd set aside.

1878, April 20. Judg't *vs.* def't Shepherd for ---------- $10,000 00
And costs of suit ---------- 23 35

Test: R. J. MEIGS, *Clerk*,
By J. R. YOUNG, *Ass't Clerk.*

July 13, '83.

Exhibit A. H. No. 3. Albert Harper, examiner.

ALBERT HARPER, *Examiner.*

509 Short copy.

Clerk's Office, Supreme Court of the District of Columbia.

THE POTOMAC TERRA COTTA CO.
vs.
MOSES KELLY & ALEXANDER R. SHEPHERD. } No. 18373, Docket.

1877.
Dec. 18. Judgment *vs.* Kelly by default for ---------- $500 00
Interest @ 8% for 4 months from Sept. 4, '76, then @ 6% until paid; costs of protest ---------- 1 95
& costs of suit ---------- 46 70

1883, June 29.—Judg't *vs.* def't Shepherd for same am't as above *vs.* def't Kelly on award of referee.

Test: R. J. MEIGS, *Clerk*,
By J. R. YOUNG, *Ass't Clerk.*

July 13, '83.

Exhibit A. H. No. 4. Albert Harper, examiner.

ALBERT HARPER, *Examiner.*

510 Short copy.

Clerk's Office, Supreme Court of the District of Columbia.

THE POTOMAC TERRA COTTA CO.
vs.
MOSES KELLY, ALEXANDER R. SHEPHERD, and ABNER B. KELLY. } No. 18374, Docket.

1883.
June 29. Judgment on award *vs.* Moses Kelly & Shepherd for $400 00
Interest at 10% from Dec. 7, 1876, until paid, and cost of suit ---------- 37 10
Suit abated as to Abner B. Kelly, bankrupt.

Test: R. J. MEIGS, *Clerk*,
By J. R. YOUNG, *Ass't Clerk.*

July 13, '83.

Exhibit A. H. No. 5. Albert Harper, examiner.

ALBERT HARPER, *Examiner.*

511 Short copy.

Clerk's Office, Supreme Court of the District of Columbia.

COLLINS & MCLEISTER
vs.
ALEXANDER R. SHEPHERD and WILLIAM J. MURTAGH. } No. 18490. Docket.

1879, M'ch 1. Judgment for plaintiffs for interest from Sept. 13, 1876 ---------- $1,000 00
Cost of protest ---------- 2 18
& costs of suit ---------- 19 40

1880, Feb. 12. *Fi. fa.* issued. Ret'd Apr. 20, '80, *nulla bona.*
Test: R. J. MEIGS, *Clerk,*
By J. R. YOUNG, *Ass't Clerk.*

July 13, '83.

Exhibit A. H. No. 6. Albert Harper, examiner.

ALBERT HARPER, *Examiner.*

512 Short copy.

Clerk's Office, Supreme Court of the District of Columbia.

BOND, BRO. & CO.
vs.
ALEXANDER R. SHEPHERD. } No. 19687. Docket.

1880, M'ch 10. Judgment on verdict for pl'ffs for ------ $2,076 68
Interest on $1,000.00, @ 9 % for 9 mo's, from Sept. 14, 1876; then @ 6 % till paid, & on $1,076.68 @ 9 % for 12 mo's, from Sept. 14, 1876; then @ 6 % till paid, and costs of suit ---------- 19 45

" May 11. *Fi. fa.* issued. Ret'd July 9, '80, *nulla bona.*
Test: R. J. MEIGS, *Clerk,*
By J. R. YOUNG, *Ass't Clerk.*

July 13, '83.

Exhibit A. H. No. 7. Albert Harper, examiner.

ALBERT HARPER, *Examiner.*

513 Short copy.

Clerk's Office, Supreme Court of the District of Columbia.

JULIANA GIDEON, Trustee,
vs.
ALEXANDER R. SHEPHERD. } No. 20680. Docket.

1879, June 4. Judgment for pl'ff by default for ---------- $3,702 65
Interest from July 18, 1876, and cost of suit 14 20

" Dec. 12. *Fi. fa.* issued. Ret'd Feb'y 9, '80, *nulla bona.*
Test: R. J. MEIGS, *Clerk,*
By J. R. YOUNG, *Ass't Clerk.*

July 13, '83.

Exhibit A. H. No. 8. Albert Harper, examiner.

ALBERT HARPER, *Examiner.*

514 Short copy.

Clerk's Office, Supreme Court of the District of Columbia.

JOHN W. THOMPSON
vs.
ALEXANDER R. SHEPHERD. } No. 20935. Docket.

1880, April 8. Judgment for plaintiff for		$4,000 00
Interest @ 8 % from Nov. 8, 1876, till paid, and costs of suit		$27 30

1883, M'ch 31. *Fi. fa.* issued & returned *nulla bona.*

Test: R. J. MEIGS, *Clerk,*
By J. R. YOUNG, *Ass't Clerk.*

July 13, '83.

Exhibit A. H. No. 9. Albert Harper, examiner.

ALBERT HARPER, *Examiner.*

515 Short copy.

THE NATIONAL METROPOLITAN FIRE INSURANCE CO.
vs.
DANIEL A. CONNALLY and ALEXANDER R. SHEPHERD. } No. 20937. Docket.

1879, Sept. 5. Judgment *vs.* def't Connally for		$1,900 00
Interest at 8 % from Aug. 8, '73, to Aug. 8, '76, & then @ 6 % till paid and protest		1 95
Costs of suit		18 25
Less $150 paid Sept. 13, '75; $200 paid Jan'y 4, 1877, & $100 paid M'ch 10, '77		
1880, Apr. 20. Judg't *vs.* def't Shepherd for same am't as above *vs.* def't Connally		

Test: R. J. MEIGS, *Clerk,*
By J. R. YOUNG, *Ass't Clerk.*

July 13, '83.

Exhibit A. H. No. 10. Albert Harper, examiner.

ALBERT HARPER, *Examiner.*

516 Short copy.

Clerk's Office, Supreme Court of the District of Columbia.

THE NATIONAL BANK OF THE REPUBLIC OF WASHINGTON
vs.
ALEXANDER R. SHEPHERD. } No. 21674. Docket.

1883, Feb'y 6. Judgment for pl'ff on stipulation for		$8,135 42
Interest on same, @ 8 % for 6 mo's, from May 5, 1879, and then @ 6 % till paid, & costs of suits		20 05

Less $2,500.00, paid April 16, 1880, &
" $2,000.00, " April 30, 1881----

Test: R. J. MEIGS, *Clerk*,
By J. R. YOUNG, *Ass't Clerk*.

July 13, '83.

Exhibit A. H. No. 11. Albert Harper, examiner.

ALBERT HARPER, *Examiner*.

517 Short copy.

Clerk's Office, Supreme Court of the District of Columbia.

JOHN FREDERICK MAY
vs.
ALEXANDER R. SHEPHERD. } No. —. Docket.

1880, Dec.	1.	Judgment on verdict for pl'ff for------	$3,163 28
		And cost of suit ----------	25 95
1881, Jan'y	11.	*Fi. fa.* issued. Ret'd M'ch 10, '81, *nulla bona*.	
" "	21.	Motion for new trial on bill of exceptions.	
1882. Apr.	3.	Judg't affirmed in gen'l term.	
" Sept.	21.	Bond for appeal to Sup. Court U. S.	
" "	"	Writ of error " " "	

Test: R. J. MEIGS, *Clerk*,
By J. R. YOUNG, *Ass't Clerk*.

July 13, '83.

Exhibit A. H. No. 12. Albert Harper, examiner.

ALBERT HARPER, *Examiner*.

518 (Form No. 8.) Folio 250.

WASHINGTON CITY.

Alex. R. Shepherd to the District of Columbia, Dr., for tax on real estate for the year ending June 30, 1880.

Tax, $1.50 per $100 assessed valuation.

Square.	Lot.	Value of lot.	Value of impr's.	Total assessed value.
164-------	Of 2-----	$10,215	$40,000	$50,215

[Written across the face:] Note of demand of Hanna & Johnston, as Geo. S. Pepper, 704 Walnut St., Phila.

To all of tax	$753 23
" abatement, 5%	37 66
" penalty, per cent.	$715 57

Received payment.

JOHN F. COOK, *Collector*,
By —— ——.

A.

Exhibit A. H. No. 19. Albert Harper, examiner.

ALBERT HARPER, *Examiner*.

519 1877.

TREASURER AND ASSESSOR'S OFFICE,
DISTRICT OF COLUMBIA, *Oct. 30th*, 1879.

Folio 5:

Of 2 lot, 164 square, assessed in the name of A. R. Shepherd.

To all of tax for year ending June 30, 1877	$850 11
To interest at six per cent. from December 1, 1876	131 75
	$981 85

Received payment.

JOHN F. COOK, *Collector*.
By —— ——.

JAS.

[Written across the face:] Of F. H. Smith, by drawbacks.

Exhibit A. H. No. 20. Albert Harper, examiner.

1878.

TREASURE- AND ASSESSOR'S OFFICE,
DISTRICT OF COLUMBIA, *Oct. 30th*, 1879.

Folio 2:

Of 2 lot, 164 square, assessed in — name of A. R. Shepherd.

To all of tax for year ending June 30, 1878	$850 11
To interest at six per cent. from Dec. 1, 1877, — Oct. 1, 1879	80 76
	$930 87

Received payment.

JOHN F. COOK, *Collector*.

JAS.

[Written across the face:] By checks of Hanna & Johnston, att'ys.

Exhibit A. H. No. 21. Albert Harper, examiner.

520 Folio 7:

WASHINGTON CITY.

Alexander R. Shepherd to the District of Columbia, Dr., for tax on real estate for the year ending June 30, 1879.

Tax $1.50 per $100 assessed valuation.

Square.	Lot.	Value of lot.	Value of impr's.	Total assessed value.
164	Of 2	$10,215	$40,000	$50,215

To all of tax	$753 23
" abatements	
" interest — per cent., Oct. 7, 1879	26 36
	$779 59

Received payment.

JOHN F. COOK, *Collector*,
By —— ——.

A.

[Written across the face:] By check of Hanna & Johnston, att'ys.

Exhibit A. H. No. 22. Albert Harper, examiner.

521 John F. Hanna. James M. Johnston.

Law Office of Hanna & Johnston, Webster Law Building.

WASHINGTON, D. C., *Nov. 3d*, 1879.

G. S. Pepper, Esq.

DEAR SIR: We enclose to you herewith tax receipts on p't lot 2, sq. 164, the front part of the Shepherd property, these:

For year ending June 30, 1879, p'd on cash	$779 59
" " " " 1878, " "	930 87
" " " " 1878, by drawbacks	981 85
	$2,692 31
The drawbacks were obtained at 87 c'ts, making the saving thereby	127 65
Am't of your check rec'd	$2,564 66

Yours very truly, HANNA & JOHNSTON.

Exhibit A. H. No. 23. Albert Harper, examiner.

522 $75.00. WASHINGTON, D. C., *June* 29, 1883.

At sight pay to the order of F. H. Smith and Son seventy-five $\frac{00}{100}$ dollars, value received, and change to account of—

F. H. SMITH & SON.

To Geo. S. Pepper, No. 906 Walnut St., Philadelphia, Pa.

ALBERT HARPER, *Examiner.*

523 F. H. Smith & Son, real-estate brokers, life & fire insurance.

WASHINGTON, D. C., *November 15th*, 1883.

Mr. George S. Pepper, Philadelphia, Penna., in account with F. H. Smith & Son for fire insurance on house N. E. cor. Ct. Ave. and K St. N. W.

1881.			
June 1.	To policy 943, Howard Ins. Co., N. Y., 1 y'r, $6,000	15 00	
" 1.	" policy 14, Providence-Washin. Co. " " $6,000	15 00	
1882.			
1.	" policy 10003, American of N. Y., " " $6,000	15 00	
			45 00
June 1.	" policy 1068, Howard of N. Y., 1 y'r, $10,000	25 00	
" 1.	" policy 72, Prov.-Wash'n of R. I., " " $10,000	25 00	
1883.			
1.	" policy 100,077, American of N. Y., " " $10,000	25 00	
			75 00
June 1.	" renewal pol. 1068, Howard of N. Y., " " $10,000	25 00	
" 1.	" renewal pol. 100,077, American of N. Y., 1 y'r, $10,000	25 00	
			75 00
" 1.	" pol. 119, Prov.-Wash. of R. I., 1 y'r, $10,000		$195 00

Received payment,

F. H. SMITH & SON.

Exhibit A. H. No. 25. Albert Harper, examiner.

[Written across the face:] Duplicate.

524 1881.

DISTRICT OF COLUMBIA, *Nov.* 15, 1883.

Items of Sale.

To all of tax for year ending June 30, 1881	$753 23
To penalty	105 45
To advertising, 1881	20
To auctioneer's fee	05
Amount sold for	$858 93

1881 Tax Book, folio 32, of lot 2, square No. 164.

To amount sold for taxes Sept. 27, 1881, assessed in name of George S. Pepper	$858 93
Interest at the rate of ten per cent. per annum from day of sale to date of redemption	
Amount required to redeem	$

Received payment,

—— ——, *Collector.*

Exhibit A. H. No. 35. Albert Harper, examiner.
F.

525 *Auditor's Coupon.*

1881.

DISTRICT OF COLUMBIA, *Nov.* 15, 1883.

Items of sale.

To all of tax	$753 23
To penalty	105 45
To advertising	20
To auction fee	05
Amount sold for	$858 93

1881 Tax Book, folio 32, of lot 2, square No. 164.

Am't sold for taxes Sept. 27, '81, assessed in name of George S. Pepper	$858 93
Int. at 10 per ct. p'r annum from date of sale to date of redemption	$
Amount required to redeem	$

F.

526 1882.

DISTRICT OF COLUMBIA, *Nov.* 15, 1883.

Items of Sale.

To all of tax for year ending June 30, 1882	$753 23
To penalty	105 45
To advertising, 1882	20
To auctioneer's fees	05
Amount sold for	$858 93

1882 Tax Book, folio 32, of lot 2 & imp., square No. 164.

To amount sold for taxes Sept. 26, 1882, assessed in name of George S. Pepper	$858 93
Interest, at the rate of ten per cent. per annum, from day of sale to date of redemption	
Amount required to redeem	

Received payment,

—— ——, *Collector.*

Exhibit A. H. No. 36. Albert Harper, examiner.
F.

527 *Auditor's Coupon.*

1882.

DISTRICT OF COLUMBIA, *Nov.* 15, 1883.

Items of sale.

To all of tax	$753 23
To penalty	105 45
To advertising	20
To auction fee	05
Amount sold for	$858 93

1882 Tax Book, folio 32, of lot 2, square No. 164.

Am't sold for taxes Sept. 26, '82, assessed in name of G. S. Pepper	$858 93
Int., at 10 per ct. p'r annum, from date of sale to date of redemption	$
Amount required to redeem	$

F.

528 1883.

DISTRICT OF COLUMBIA, *Nov.* 15, 1883.

Items of Sale.

To all of tax for year ending June 30, 1883	$753 23
To penalty	105 45
To advertising, 1883	20
To auctioneer's fee	5
Amount sold for	$858 93

1883 Tax Book, folio 34, part of lot 2 & imp., square No. 164.

To amount sold for taxes, Sept. 25, 1883, assessed in name of George S. Pepper	$858 93
Interest at the rate of ten per cent. per annum from day of sale to date of redemption	
Amount required to redeem	$

Received payment,

—— ——, *Collector.*

Exhibit A. H. No. 37. Albert Harper, examiner.
F.

529 *Auditor's Coupon.*

1883.

DISTRICT OF COLUMBIA, *Nov.* 15, 1883.

Items of sale.

To all of tax	$753 23
To penalty	105 45
To advertising	20
To auction fee	05
Amount sold for	$858 93

1883 Tax Book, folio 34, p't of lot 2, imp's, square No. 164.

Am't sold for taxes, Sept. 25, '83, assessed in name of G. S. Pepper	$858 93
Int. at 10 per ct. p'r annum from date of sale to date of redemption	$
Amount required to redeem	

F.

530 I certify that the foregoing depositions (containing 113 pages) were written down by me in short-hand as an examiner in chancery from the statements when and as uttered by the

deponents thereof, and were afterwards transcribed into print at my dictation and sworn to be the respective *deponents*.

I further certify that I am not of counsel nor in anywise interested in said cause.

ALBERT HARPER,
Examiner in Chancery.

531 Filed Oct. 1, 1884. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
ALEXANDER R. SHEPHERD *et al.* } In Equity. No. 7803.

Be it remembered that as an examination of witnesses begun and held on the third day of June, A. D. 1884, pursuant to agreement, personally appeared before me, Albert Harper, an examiner in chancery of said court, the within-named James E. Fitch, who, being produced as a witness of lawful age for and on behalf of the complainant, and being first duly sworn and cautioned to tell the truth, the whole truth, and nothing but the truth touching the matters at issue in the above-entitled cause, did depose and say as follows:

TUESDAY, *June* 3, 1884—2 o'clock p. m.

Met pursuant to agreement.

Present: Henry Wise Garnett, Esq., solicitors for the defendant Gray; William F. Mattingly, Esq., solicitor for the defendant Shepherd; Messrs. Hanna & Johnston, solicitors for the complainant; also the examiner and—

532 JAMES E. FITCH, who, being produced as a witness of lawful age for and on behalf of the defendant Gray and being first duly sworn, deposes and says:

Direct examination by Mr. GARNETT:

Q. You are a member of the firm of Fitch, Fox & Brown?

A. Yes, sir.

Q. Which was formerly the firm of Fitch, Fox & Co.?

A. Yes, sir.

Q. You have heard read the copy of the letter which has been filed in this case with the deposition of Mr. George W. Brown, a witness on the part of the complainant, which purports to be copied from your letter book, under date of April 18, 1876, which letter Mr. Brown testifies is in his handwriting written at your dictation. Are you the Mr. Fitch of whom he speaks?

A. Yes, sir.

Q. Will you please state, in the first place, whether that copy is a correct copy of the letter?

A. I believe it to be a correct copy.

Q. Now, you may further state how you came to write that letter.

533 A. Mrs. Mercy Maria Carter (now Mrs. Gray) called upon me with regard to making a change in the security held by

her for the loan to Gov. A. R. Shepherd. Mr. Shepherd also called to see me. In answer to his remark that he hoped I would find it satisfactory, I remarked to him that I did not——

(Mr. GARNETT: You need not recite any conversation between you and him. Just state the facts—what happened, what you did.)

WITNESS (continuing): I suggested to her what is in substance in this letter which you have just referred to. I wrote this letter to her in consequence of the interviews with her and Mr. Shepherd.

Q. Did you send her that letter?

A. This letter was sent to her.

Q. You speak in this letter of an abstract of title, which you state should be furnished. Do you know whether any abstract of title was made out?

A. I think that was gotten; I cannot speak positively, but my conviction is that it was obtained before the matter was closed. This matter was a month in being closed.

Q. Do you know whether or not the condition of the title as to both pieces of property was discovered before the transaction was closed?

534 A. My impression is not distinct as to what was stated in the first place in regard to whether or not it was a first mortgage, but I feel positive that before this abstract was gotten, and also through it, before the matter was closed, it was understood to be a first mortgage on part of the property.

Q. Do you know whether that matter was discussed as to whether it was a first or second mortgage?

A. I think it was discussed by Mr. Shepherd. I think he stated that he had given a mortgage on part of the house. At the first interview, when he asked me if I had seen Mrs. Carter and agreed to that request or suggestion of his, I cannot say that he made that remark; he may have done so, but I do not remember whether he did or not.

Q. I asked with reference to the time of the transaction of the loan?

A. My impression is (it is more than an impression—I have a quite firm conviction) that before the matter was closed this thing was stated; that part of it was covered by a first mortgage. How much stress was laid upon that I do not know. As to its being only the rear part, I feel very confident that was spoken of.

535 Q. Was it spoken of in Mrs. Gray's or Mrs. Carter's presence?

A. Yes, sir; I think it came up in conversation. As you know, she did not carry out the suggestion in my letter, and that was that she should have a chattle mortgage upon the furniture in the house. She herself waived that requirement with Mr. Shepherd.

Q. Do you remember going down to Mr. Johnston's office in connection with this matter?

A. Yes, sir.

Q. Did you have any conversation with Mr. Johnston at his office about the matter at any time?

A. I do not recollect of any.

Q. Do you remember the time that Mr. Pepper was present there?

A. Yes, sir.

Q. Do you remember any conversation about this matter with Mr. Johnston at that time?

A. I do not remember at this moment.

Q. You remember being at his office?

A. Yes, sir; I recollect being at his office.

Q. Do you remember whether you were interrogated about this letter?

A. I do not remember having any conversation with Mr. Johnston, excepting some general remarks. I think Mr. Johnston was with Mr. Pepper when I went in. He left the room, and I chatted with Mr. Pepper.

536

Q. Was the conversation with Mrs. Gray, at which it was in some way stated that the first mortgage was on the rear part and an abstract spoken of before the date of this letter?

A. Yes, sir; because this letter was written after the interview with her.

Q. Had you any abstract of title at the time that letter was written?

A. I think not; because I think that if there had been an abstract I would not have made the suggestion to get an abstract.

Q. As I understood you, an abstract was gotten before the transaction was closed?

A. That is my recollection. If an abstract was gotten, I think it was developed by this conversation subsequently. I do not say that I had no conversation with Mr. Johnston on this subject at the time mentioned, but I remember none.

Cross-examination by Mr. HANNA:

Q. Did Mrs. Gray go to you in the first instance with respect to taking security from Mr. Shepherd?

537

A. Yes; but I was not applied to at the time. She came to the office of my firm after Mr. Shepherd had spoken to her about making this change, and she had said to him that she would have to consult me first, and when I returned from Philadelphia, where I was at the time, she came to see me.

Q. At the time she came to see you did you know the status of the title to this property?

A. I knew nothing of it at all at that time. I had no reason to know, having nothing to do with his property.

Q. Did you not know at that time that Mr. Pepper had a deed of trust on this property?

A. I knew it by general repute.

Q. What was your knowledge as to the extent of that deed of trust?

A. That I could not say. I simply knew by general talk that Mr. Pepper had a large mortgage on the Shepherd property.

Q. How long was it from the time she came to see you before you wrote that letter to her?

A. One or two days.

Q. At the time that you wrote that letter did you know anything more in reference to the title?

A. Yes, sir.

Q. What did you know?

A. She had told me and Mr. Shepherd had told me that Mr. Pepper had a mortgage upon the property.

538 Q. Upon the whole of it?

A. I cannot say. I cannot speak positively with regard to it.

Q. What was your understanding or reference as to the fact at the time you wrote that letter as to the extent of the encumbrance held by Mr. Pepper on Mr. Shepherd's property?

(Mr. GARNETT: I object to the witness' understanding as being inadmissible in the first place; in the second place, as not being evidence against the defendant Gray.)

A. I simply repeat that I have no distinct recollection whether that was named or not. I have no distinct recollection of it being stated; that part of it was covered by the first mortgage.

Q. Where did you get the information contained in your letter?

A. From Mr. Shepherd and Mrs. Gray.

Q. What was that information?

A. That there was a loan upon it held by Mr. Pepper.

Q. To what extent?

A. Forty-five thousand dollars.

Q. As to the property covered by it?

A. I did answer that. I have no distinct recollection as to whether he stated that it was a first mortgage of Mr. Pepper on the whole of the property or not.

539 Q. At the time you wrote that letter did you suppose that any portion of the property was not covered by the deed of trust at the time?

A. I cannot answer that. I have no distinct recollection of his stating at that time that part of it was unencumbered.

Q. In your letter you say that you recommend an abstract to be made to date?

A. Yes, sir.

Q. Did you mean by that an abstract from the date of Mr. Pepper's loan or an abstract from the foundation of the title?

A. No, sir; it means just what it states.

Q. From what date?

A. It does not state.

Q. What did you mean by that sentence?

A. Just what I say.

Q. Did you mean by that letter an abstract from the foundation of the title or from the date of the mortgage to Mr. Pepper?

A. I meant a full abstract; that if one was in existence up to the date of Mr. Pepper's loan that would do by bringing it down, but if not, to go back of it. There is only one meaning to the remark.

Q. What did you mean by that particular sentence, by that rec-

ommendation; was it that she should get an abstract of title
540 from the date of Mr. Pepper's loan or an abstract from the foundation of the title?

A. I did answer that question; that is, if she had a good abstract up to the date of Mr. Pepper's loan, it was not necessary to go back of it, but if not it was necessary to go back of it.

Q. She had no abstract of title at all after Mr. Pepper's loan, then?

A. I am speaking of a perfect abstract, not of a perfect title.

By Mr. JOHNSTON:

Q. If she could procure a partial abstract, that would do by bringing it down?

A. Yes, sir.

By Mr. GARNETT:

Q. Did you advise Mrs. Gray to get a full abstract from the beginning?

A. I meant simply to get a satisfactory abstract, a perfect abstract, that would meet all the requirements, whether she had to go back of Mr. Pepper's loan or not.

By Mr. HANNA:

Q. Did you order that abstract?

A. No, sir.

Q. Who did?

A. I do not know who did.

Q. Did you pay for it?

541 A. That I cannot tell you. No, sir; we could not have paid for it unless the money was paid to us, as no money passed through our hands.

Q. Were you agent for Mrs. Gray?

A. Yes, generally; but not in this transaction. We rented her property and everything of that kind for her, but this property of Mr. Shepherd we knew nothing about, and never had it in our hands or any property of his.

Q. Did you ever see that abstract?

A. As I have already said, I cannot speak positively; but my conviction is that the abstract was gotten, but whether I saw it or Mrs. Carter told me she had gotten it at that time I do not remember. But that abstract which I think was gotten developed, as I recollect, the fact that part of it was unencumbered.

Q. Was that fact made known to Mr. Shepherd?

A. Yes; I think so.

Q. By whom?

A. I cannot say. My impression is that he spoke of it in my presence, that she had a first mortage on part of the property.

Q. Was that before or after the abstract was gotten?

A. It was, I think, after the abstract was gotten that he spoke of it. I think that was developed by the abstract.

Q. What did the abstract show in respect to this rear lot?

542 A. That I cannot answer satisfactory. I have already stated that my recollection is indistinct about the transaction. I feel satisfied that the abstract was gotten—that is, that she stated she had gotten the abstract, and that she complied with my suggestions in every way in this letter, except getting the chattle mortgage. But as to having seen it, I cannot swear that I saw the paper. I have stated that my conviction is that the paper was gotten. I will not say that I got it, nor that I did not get it. We were not acting as a firm in paying out money for anybody. We never got one cent from either side, and therefore we would not be paying out money; and for that reason I do not think we had anything to do with getting the abstract.

Q. Can you say distinctly whether you received information directly from this abstract or received it from Mrs. Gray as to the status of the title of the rear lot?

A. I cannot speak positively. I think that she got the abstract, and in the conversation that thing was developed. I think it came up in connection with her getting the chattle mortgage.

Q. Was anything said by Mr. Shepherd as to his intention

543 concerning the deed of trust given to Mr. Pepper as to the property to be included in the deed of trust given to Mr. Pepper?

(Mr. GARNETT: Question objected to.)

A. No, sir. As near as I can answer that is that Mr. Shepherd spoke of it before this thing was closed.

Q. I called your attention to that to see whether or not you recollected anything he said about the mistake, in view of the fact that Mr. Shepherd stated in his testimony that he did not know of the error in the description in the deed of trust until a long time afterwards.

A. That would not make any difference in the matter. My conviction is that it was mentioned by him and by her before this matter was closed, which was a month after this *month* was written.

Q. State what was mentioned.

A. I cannot tell. It is impossible after the lapse of eight years to tell exactly what took place in my office at an interview.

Q. Was your information at that time that Mr. Shepherd had the fee simple and unincumbered title to this rear lot?

(Mr. GARNETT: Question objected to as immaterial.)

A. I think that he mentioned it. I think that it came up

544 in conversation with this chattle mortgage. I would say that Mr. Shepherd asked that it be closed, as it was subsequently—that is, without the chattle mortgage. Then I said, "I cannot see the way to do that. I think you ought to give her the chattle mortgage." He then said, "You cannot, then, change your letter to her." I said, "I cannot conscientiously change it." He said, "I am sorry." He then went away to see Mrs. Carter, and she

waived the requirement with him. It took a month to close the matter. The insurance matter was one thing which caused the settlement to be delayed. At last she came into the office and said, "The matter is all right now, is it not?" I said, "Not at all. You have not the chattle mortgage that my letter calls for." She said, "Did you not consent to yielding that point?" I said, "Not at all." She then said, "Then I will let the whole thing go." To which I answered, "You must do as you think best about that." She then, at my suggestion, went to consult with Mr. Lewis J. Davis. She came back and said, "Mr. Davis says the same as you do, but has no advice to give; but I have decided to go on with the matter."

545 I think it was during that talk that she spoke of this security—that she had a first mortgage on part of it. I do not state positively now that this did occur during this interview.

Q. Had you at that time any knowledge as to what portion of the ground included in the Shepherd property was not embraced in the deed of trust to Mr. Pepper?

A. It was not definite, but it was part; and, as I recollect, part of the ball-room was on it; part and not all.

Q. Those are the circumstances that transpired at that time?

A. Yes; I think so; not all at that time, but they all transpired before the transaction was closed.

Q. Within a month after that letter was written you knew that the lot, which you say was not included in the description in the Pepper trust, was covered partly by the ball-room of the Shepherd house?

A. Before the matter was definitely closed; the exact time I cannot name, but about a month. It is my positive conviction that I understood that a part of the ground was unencumbered, and that part was rear lot, and on it was part of the ball-room—that is, it was not the whole extent of the ball-room.

Q. From whom did you get those details as to the ball-room?

546 A. From whomever I got the other information—that it was a first mortgage, that it was unencumbered.

Q. And from whom was that gotten?

A. As I have already stated, I think that was both from Mrs. Carter and Mr. Shepherd.

Q. Have you not frequently heard these questions discussed as to this misdescription in the Pepper trust and the notice to Mrs. Gray since these proceedings have been begun?

Mr. GARNETT: I object to that question, as there is no evidence that there was any misdescription in the Pepper trusts.

Mr. HANNA: I will call it, then, ommission from the Pepper deed of trust or the question in regard thereto.

(Mr. GARNETT: Same objection.)

A. About all that I have heard of it is in the investigation of this matter during the taking of testimony here.

Q. Since this transaction of Mrs. Gray have you had any conversation with Mr. F. H. Smith in regard to this matter?

A. I have no recollection of having spoken to Mr. Smith on the subject. I will not say I have not, but I have no recollection at this moment of doing so or even speaking or having any conversation at all on the subject with him. If any was held it was
547 a long time ago and has gone out of my mind.

Q. Did you not tell him, since the year 1878, that Mrs. Gray supposed that she had taken a second mortgage on the whole property?

Mr. GARNETT: Question objected to, because, if its purpose is to contradict the witness, it must give the time and place.

A. I have no recollection whatever of making any such statement.

Mr. HANNA: I may have occasion to fix that time and place.

Mr. GARNETT: The witness has stated that he has no recollection of any such interview at any time or place.

Q. I do not know whether I have asked you this question definitely or not. Please state what the abstract you refer to showed as to the title to the rear lot.

A. As I have already stated, I think it was developed either through the abstract, if gotten, as I think it was, or conversations subsequent to that, as to this part not being mortgaged. I have not a distinct recollection of even seeing the abstract, but I think one was gotten.

Q. Do you mean by that that the fee-simple title, unencumbered, was in Mr. Shepherd?

548 (Mr. GARNETT: Question objected to, as the witness has said no such thing and has not undertaken to pass upon the title of Mr. Shepherd to the property, only that it was not mortgaged.)

A. Not at all. I simply said that it was not mortgaged. I meant to say not covered by the mortgage to Mr. Pepper. I will leave it "not mortgaged."

Q. How did it stand?

A. I say it was not mortgaged, and naturally it would stand in Mr. Shepherd's name, I suppose.

Q. Do you mean to say that the abstract showed that the title stood in Mr. Shepherd?

A. I mean to say that it was not mortgaged, and that it would be implied that it was in him.

Q. Did you understand, therefore, that the rear lot was considered good unencumbered security up to the value thereof in favor of Mrs. Gray as first mortgage?

(Mr. GARNETT: Question objected to, as the witness has not undertaken to pass upon the condition of the title to the rear lot beyond the fact that it was not covered by the mortgage of Mr. Pepper, and

the understanding of counsel in this case, as stated in his
549 question, is not based upon any statement made by the witness in his testimony.)

(Mr. HANNA: Counsel for complainant object to that exception as being of a character which has a tendency to lead the witness.)

(Mr. GARNETT: Counsel for the defendant Gray objects to questions based upon suppositions that the witness stated things which he has not stated in his testimony.)

A. That is implied in my previous answer to that question, I think.

Q. You stated a little while ago something about Mrs. Gray waiving the chattel mortgage. Did the discovery of the first mortgage, as claimed, on the rear lot have anything to do with that waiver?

A. That I cannot say. I will say this, that she expressed great confidence in Mr. Shepherd, and thought that if he only lived he would get through all this, and made that waiver of her own motion.

Q. When Mrs. Gray agreed to take the mortgage on the Shepherd house did she not then do so on the assumption by her that she was taking a second mortgage on the whole property?

A. That I cannot say.

Q. At the time you wrote that letter what was your impression in that regard?

WITNESS: Mrs. Gray can answer the other question and I
549*a* can answer this question myself.

A. When I wrote this letter, as I have stated, I cannot say that I thought it was a first mortgage. That would be my impression, although it is not implied. I would like to say this, that this letter was called for in my absence, and I do not think that a letter of this kind should be subjected to such criticisms; in other words, I think that any firm might send out this letter without mentioning that on the rear part of the lot there was no encumbrance.

Redirect examination by Mr. GARNETT:

Q. At the time you wrote that letter had Mrs. Carter agreed to take this mortgage from Mr. Shepherd?

A. Her action was to be based on my answer. She was waiting to hear from me, whether I would recommend it or not.

Q. At the time you wrote that letter she had not then agreed to take it, but was waiting to hear from you?

A. Yes, sir.

Q. Did you know or do you know now anything about the title of Mr. Shepherd to this rear part of the lot beyond the fact that it was not included in the mortgage to Mr. Pepper?

549*b* A. I did not, to my knowledge, and had no reason to, not being his agent, except this, of course, that I got the impression that Mr. Pepper had made a loan on the property.

Recross-examination by Mr. HANNA:

Q. You have stated, in response to a question just propounded by Mr. Garnett, that Mrs. Gray's action in accepting the mortgage was based upon your answer. Do you mean by that to refer to the letter about which testimony has been given?

A. I refer to that letter. She did not comply with this letter fully. As I have already stated, she waived that requirement, that Mr. Shepherd should give her a chattel mortgage on the furniture worth fifty thousand dollars; but she did not wait for this letter, and first acted on it as an entirety. Then she waived this chattel mortgage afterwards.

Q. So that the only change in her action, as suggested or advised in that letter, was that she had taken less than you had recommended?

A. Yes, sir.

549c Re-redirect examination by Mr. GARNETT:

Q. Do you mean to state that upon receipt of the letter from you by Mrs. Gray she immediately stated that she would accept the loan and did then and there accept it, or did she examine into the title?

A. I believe that she required the getting of this abstract of title.

Re-recross-examination by Mr. HANNA:

Q. At the time this letter was written you did not know of any of the Shepherd property to be given as security being unencumbered?

A. Not to my recollection.

JAMES E. FITCH.

Subscribed and sworn to before me this first day of October, A. D. 1884.

ALBERT HARPER, *Examiner.*

Mr. Garnett, solicitor for the defendant Gray, here closes the testimony in her behalf.

550 I further certify that the foregoing deposition (containing fifteen printed pages) was written down by me, as an examiner in chancery, in short-hand from the statements when and as uttered by the deponent thereof, and was afterwards printed at my dictation and thereupon read over and subscribed by the said deponent in my presence.

I further certify that my fee for taking and certifying to said deposition has been paid to me by the defendant Gray.

I further certify that I am not of counsel nor in anywise interested in the said cause.

ALBERT HARPER,
Examiner in Chancery.

551 *Original Bill. Filed Apr.* 11, 1878. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia. In Equity.

GEORGE S. PEPPER
vs.
ALEXANDER R. SHEPHERD, MARY G. SHEPHERD, His Wife; Andrew C. Bradley, Wm. H. Phillips, Wm. F. Mattingly, George Taylor, Samuel Bacon, Samuel Cross.

Chancery No. 6201, Docket No. 18.

To the honorable the justice holding said court:

Your complainant shows as follows, to wit:

I. That he is a resident of the city of Philadelphia, State of Pennsylvania.

II. That the defendant- are all residents of the District of Columbia.

III. That heretofore, to wit, on the first day of June, 1874, the defendants, Alexander R. Shepherd and Mary G. Shepherd, his wife, conveyed to the defendants, Andrew C. Bradley and William
552 H. Philips, certain real estate in the city of Washington, District of Columbia, to wit: Part of lot numbered two (No. 2), in square numbered one hundred and sixty-four (29 [No.]164), and bounded as follows, viz: Beginning at a point on North K street forty-three feet nine inches (43 ft. 9 inches) east of the southwestern corner of said square and running thence west on K street forty-three feet nine inches (43 ft. 9 inches) to said southwestern corner of said square; thence northwesterly along the line of Connecticut avenue about eighty feet and ten inches (80 ft. 10 inches) to the south line of original lot number three (No. 3), in said square; thence northeasterly and at right angles with said avenue and along the line of said lot three about eighty-five (85 ft.) feet to intersect a line drawn due north from the point of beginning, in trust to secure the complainant in the full sum of thirty-five thousand ($35,000) dollars, for which amount the said Alexander R. Shepherd passed to the complainant his certain promissory note dated June 1st, 1874, and payable in five years after date, with interest at the rate of nine per centum per annum (9 %), payable semi-annually, for which interest ten coupons or interest notes for $1,575.00 each were then executed and delivered to complainant; all of
553 which will more fully appear by a reference to said deed of trust, herewith filed and marked Exhibit G. P. No. 1.

IV. That heretofore, to wit, on the 22d day of March, 1875, the said defendants, Alexander R. Shepherd and Mary G. Shepherd, his wife, conveyed the above-described real estate to the defendants, Andrew C. Bradley and William F. Mattingly, in trust to secure the complainant in the full sum of ten thousand ($10,000) dollars, for which amount the said defendant Shepherd passed to the complainant his certain promissory note dated March 22d, 1875, and

payable five years after date, with interest at the rate of nine per centum per annum (9 %), payable semi-annually, for which interest ten coupon notes for $450.00 each were executed and delivered to complainant, which will fully appear by reference to said deed of trust, herewith filed and marked Exhibit G. P. No. 2.

V. Your complainant shows that the trustees in both of said deeds of trust are bound and controlled by the following clauses, and that they hold their estates subject thereto, to wit: "In and upon the trusts, nevertheless, hereinafter mentioned and declared—that
554 is, to permit the said Alexander R. Shepherd, his heirs and assigns, to use and occupy the said described premises and the rents, issues, and profits thereof, to take, have, and apply to and for his and their sole use and benefit until default be made in the payment of said notes or either of them or any instalment of interest due thereon," &c.

"And upon this further trust, that upon default being made in the payment if said notes or either of them or any instalment due thereon, &c., then and at any time thereafter to sell the said piece or parcel of land and premises at public auction in front of the premises after at least twenty days' notice of the time, place, and terms of sale by advertisement in some one or more of the newspapers printed and published in the city of Washington," &c.

VI. Complainant further shows that said defendants, Alexander R. Shepherd and Mary G. Shepherd, his wife, on the 15th day of November, 1876, conveyed to the defendants, George Taylor and Samuel Cross, and one Henry Williard all his estate of every kind to secure his unsecured creditors, and that the above-men-
555 tioned property is conveyed to them as lot 3, square No. 164 (which description is that given to a subdivision made by Alexander R. Shepherd July 3d, 1873); all of which will more fully appear by a reference to said deed, duly recorded in Liber 839, folio 226 *et seq.*, one of the land records for the District of Columbia.

VII. Complainant further shows that said Henry Williard refused to accept said trust, and that the other trustees, Taylor & Cross, under the powers vested in them appointed the defendant, Peter S. Bacon, to fill the vacancy occasioned by the refusal of said Henry Willard to act, as will more fully appear by reference to such appointment, duly recorded in Liber 829, folio 225 *et seq.*, one of the land records, &c.

VIII. Complainant further shows that he is still the holder and owner of said principal and interest or coupon notes, and that several of said coupon or interest notes are long since due and payable, and that there has been no amount paid on said loans since the 22d day of September, 1876, and that there is now due the principal sums of $35,000 and $10,000, with interest thereon from their respective dates, minus the amounts paid and interest on said
556 coupon or interest notes due and unpaid, as is shown by Exhibit G. P. No. 3, hereto annexed.

IX. Complainant further shows that said property is largely encumbered with taxes, and that the same has been sold for taxes for the year ending June 30th, 1877, for the sum of $943.95, and that said amount bears interest at the rate of 10% from August 14th,

1877, the day of sale, and also that there are now due on said property taxes to the amount of $850.11 for the year ending June 30th, 1878, as is shown by said tax bills, annexed hereto and marked Exhibits G. P. No-. 4 & 5.

X. Your complainant shows that said Alexander R. Shepherd, by said deeds of trust, conveyanted and agreed that he would keep the said property insured during the continuance of these trusts, and that on default being made in the payment of the premiums due thereon your complainant should have the right to pay the same and charge it as part of the principal sums loaned, and he charges that such default has been made, and in order to protect his security he has advanced the amount of said premiums and claims
557 that the same should be charged as is provided in said deeds, and that in order to enforce the collection of the respective sums due him in the manner provided in said deeds of trust, said Shepherd having neglected and refused to make such payments, demand having been made, he did, in writing, order and request the trustees under said deeds of trust (to secure him) to advertise said real estate for —, but that said defendant, Andrew C. Bradley, one of the trustees under both of said deeds of trust, refused so to do, and his written refusal is annexed hereto, marked Exhibit G. P. No. 4.

XI. Your complainant avers that the delay in the enforcement of said trusts has already prejudiced and still prejudices his rights as the holder of the said principal and coupon or interest notes secured by said deeds of trust; that the interest due on said amounts secured is increasing every day and taxes are accumulating, and your complainant fears that the property will not be of sufficient value to repay him the amounts now due him and intended to be secured by said deeds of trust, and he shows that from the letter of re-
558 fusal of said Andrew C. Bradley to act as trustee it would appear that defendant Alexander R. Shepherd proposes to set up as an objection to a sale the fact that the deeds of trust to secure your complainant and sought to be inforced "does not cover the entire area of the house, cutting off about 20 feet of the rear." He admits the fact, having *having* since the receipt of said letter looked over the plan of construction of said house, but charges that at the time of the negotiation of the loans aforesaid he was informed and so believed that said deeds of trust covered the whole of said house and lots, and that with the preparation of the said deeds of trust he had nothing whatever to do, and that the same were prepared by the said Shepherd, his attorney or agent, and that he never saw the same until after said negotiations were fully settled and the money passed to said Shepherd, and that for any mistake or omission he—Shepherd—is alone responsible; that at the date of said deeds of trust the house was completed and occupied by the said Shepherd as a dwelling, and that sublot A, sq. 164, on which a part of said house appears to rest, was also at that time owned by said Shepherd, and, as your complainant has before charged, it was
559 understood that the said trusts to secure him would and did cover the whole area of ground occupied and covered by the house and grounds.

XII. Your complainant shows that the part of said house not included in said deeds of trust to secure him is what is known as the "picture gallery," and is situated on what is known in the tax office of the District of Columbia as sublot "A," square 164; and he charges that said "picture gallery" is — feet long, and that the rear end, of about — feet, could be detached without marring or in any wise lessening the value of said property; and your complainant claims that in view of all the circumstances surrounding the negotiation of the said loans, and from the facts that he was informed and so believed that the deeds of trust to secure him covered the whole area of ground covered by said house, he is entitled to enforce the collection of the sums due him irrespective of any injury such sale may do the defendant Shepherd or any one holding under, by, or through him; and in any event he has the right to enforce the sale of so much of said property as is covered by his said deed of trust.

560 XII. In view of the premises and the manifest injury suffered by your complainant in the non-payment of interest and taxes and the default in the payment of the premises due on polic-es of insurance, and because he has no adequate remedy at law, he prays—

1st. That the United States writs of subpœna may issue to the defendants commanding each and every of them to appear and make answer to the matters and things contained in this bill.

2d. That a trustee be by the order of this honorable court appointed in place and stead of the trustees under said deeds of trust first mentioned, with directions and authority to forthwith execute all the trusts reposed in them respectively by the said deeds of trust.

3rd. That, in addition to the amounts due to your complainant for principal and interest due on said principal and coupon notes and all other proper charges and allowances, there may be allowed to him the costs and expences to which he may have been put in enforcing the said deeds of trust in this proceeding, and

561 that your complainant may have such other and further relief as the circumstances of the case may require.

W. S. COX,
GEOR. A. HYDE,
Lot 'ers.

EXHIBIT G. P. No. 1.

This indenture, made this first day of June, in the year of our Lord one thousand eight hundred and seventy-four, between Alexander R. Shepherd and Mary G. Shepherd, his wife, of the city of Washington, in the District of Columbia, of the first part, and Andrew C. Bradley and William H. Philip, of the city of Washington, D. C., of the second part: Whereas the said Alexander R. Shepherd is justly indebted unto George S. Pepper in the sum of thirty-five thousand dollars, for which he has executed and delivered to the said Pepper his promissory not-, dated June 1st, 1874, and payable in five years after date, with interest at the rate of nine

per centum per annum, payable semi-annually, for which
562 ten coupon notes for $1,575 each have been executed and delivered, and, being desirous to secure the punctual payment of said notes, when and as the same shall (respectively) become due and payable, with all interest and costs due and accruing thereon, doth therefore execute these presents:

Now, therefore, this indenture witnesseth, that the said parties of the first part, for and in consideration of the premises aforesaid, and further the sum of one dollar, in lawful money of the United States, to them in hand paid by the said parties of the second part, at and before the sealing and delivery of these presents, the receipts whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released, and conveyed, and do by these presents grant, bargain, sell, alien, enfeoff, release, and convey, unto the parties of the second part, or the survivor of them, his heirs and assigns, the following-described real estate, situate in the city of Washington, District of Columbia, to wit: Part of lot numbered two (2) in square numbered one hundred and sixty-four (164), and bounded and described as follows, viz:

Beginning at a point on North K street forty-three feet and
563 nine inches ($43\frac{9}{12}$ ft.) east of the southwestern corner of said square and running thence west on K street forty-three feet and nine inches ($43\frac{9}{12}$ ft.) to said southwestern corner of said square; thence northwesterly along the line of Connecticut avenue about eighty feet and ten inches ($80\frac{10}{12}$ ft.) to the south line of original lot numbered three (3) in said square; thence northeasterly and at right angles with said avenue and along the line of said lot three about eighty-five (85) feet, to intersect a line drawn due north from the point of beginning, and thence due south to the point of beginning, together with all the improvements, ways, easements, rights, privileges, and appurtenances to the same belonging or in any wise appertaining, and all the estate, right, title, interest, and claim whatsoever, whether at law or in equity, of the said parties of the first part, of, in, to, or out of the said piece or parcel of land and premises:

To have and to hold the said piece or parcel of land and premises, with the appurtenances, unto and to the use of the said parties of the second part, or the survivor of them, his heirs and assigns.

To and upon the trusts, nevertheless, hereinafter mentioned and declared—that is, in trust to permit the said Alexander R.
564 Shepherd, his heirs or assigns, to use and occupy the said described premises, and the rents, issues, and profits thereof to take, have, and apply to and for his and their sole use and benefit until default be made in the payment of said notes, or either of them, or any instalment of interest due thereon, or any proper cost, charge, commission, half commission, or expense in and about the same.

And upon the full payment of all of said notes and the interest thereon and all other proper costs, charges, commissions, half commissions, and expenses, at any time before the sale hereinafter provided for, to release and reconvey the said described premises unto

the said Alexander R. Shepherd, his heirs or assigns, at his or their cost.

And upon this further trust, that upon default being made in the payment of said note-, or either of them, or any instalment of interest due thereon, or any proper cost, charge, commission, half commission, or expense in and about the same, then and at any time thereafter to sell the said piece or parcel of land and premises at public auction, in front of the premises, after at least twenty days' notice of the time, place, and terms of sale, by advertisement
565 in some one or more of the newspapers printed and published in the said city of Washington; which said terms of sale shall be as follows, viz., the sum of twenty thousand dollars in cash; a further sum of twenty thousand dollars, with interest thereon at the rate of nine per cent. per annum, in twelve months after the day of sale, of which the note of the purchaser, secured by a deed of trust on the property sold, shall be taken, and the balance at twenty-four and thirty-six months, for which the notes of the purchaser, bearing interest at the rate of six per centum per annum from the day of sale, and secured by a deed of trust on the property sold, shall be taken. A deposit of one thousand dollars shall be required of the purchaser at the time of sale, and all conveyancing and revenue stamps shall be at the expense of the purchaser.

And upon this further trust: upon full compliance with the terms of sale, to convey the property sold in fee simple to the purchaser or purchasers thereof at his, her, or their cost and expense, and without any liability to see to the application of the purchase-money and of the proceeds of said sale or sales, first, to pay all proper costs, charges, and expences, and to retain as compensation a commission of two per cent. on the amount of said sale or
566 sales; secondly, to pay whatever may then remain unpaid of the said notes and the interest thereon to the time of said sale, whether the same shall be due or not; and, lastly, to pay the remainder, if any, to said Alexander R. Shepherd, his heirs or assigns.

And the said Alexander R. Shepherd does hereby covenant with the said parties of the second part or the survivor of them, his heirs and assigns, that the buildings on said parcel of land shall be kept insured during the continuance of this trust in some good and responsible fire insurance company or companies in the sum of twenty-five thousand dollars, and the policy or policies of insurance be assigned to the said parties of the second part as trustee under these presents; and, further, that in case the said Alexander R. Shepherd or his heirs or assigns shall fail to keep said property so insured, then the same may be insured for the amount aforesaid by the said George S. Pepper, and the amount of premium paid shall be considered a part of the expense of said note secured hereby, in default of payment of which the said parties of the second part or the survivor of them, his heirs and assigns, shall have power to sell said property hereby conveyed as aforesaid, and shall dispose of the proceeds of sale as hereinbefore provided.

567 In testimony whereof the said parties of the first part have hereunto set their hands and seals on the day and year first hereinbefore written.

1st page, 15th line, the words "for which ten coupon notes for $1,575 each have been executed and delivered," and on 2n- page, 2d line from bottom, the word "dollar" interlined, and 3d page, 2d line, the words "in cash" ruled out before signing.

ALEX. R. SHEPHERD. [L. S.]
MARY G. SHEPHERD. [L. S.]

Signed, sealed, and delivered in the presence of—
J. F. OLMSTEAD.

DISTRICT OF COLUMBIA, *County of Washington*, } ss:

I, J. F. Olmstead, a notary public in and for the county aforesaid, do hereby certify that Alexander R. Shepherd and Mary G. Shepherd, his wife, parties to a certain deed bearing date on the first day of June, A. D. 1874, and hereto annexed, personally appeared before me, in the county aforesaid, the said Alexander
568 R. Shepherd and Mary G. Shepherd being personally well known to me to be the persons who executed the said deed, and acknowledged the same to be their act and deed; and the said Mary G. Shepherd, wife of the said Alexander R. Shepherd, being by me examined privily and apart from her husband, and having the deed aforesaid fully explained to her, acknowledged the same to be her act and deed and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and notarial seal this first day of June, A. D. 1874.

J. F. OLMSTEAD,
Notary Public.

Part lot 2, square 164, 1 p. m.

Received for record on the 3 day of June, A. D. 1874, and recorded in Liber No. 754, folio 51, one of the land records for Washington county, in the District of Columbia, and examined by—

S. WOLF, *Recorder.*

GEO. F. SCHAYER, *Dep.*

569 EXHIBIT G. P. No. 2.

This indenture, made this twenty-second day of March, in the year of our Lord one thousand eight hundred and seventy-five, between Alexander R. Shepherd and Mary G. Shepherd, his wife, of Washington city, D. C., of the first part, and Andrew C. Bradley and William F. Mattingly, of the city of Washington, D. C., of the second part.

Whereas said Alexander R. Shepherd is justly indebted unto George S. Pepper in the sum of ten thousand ($10,000) dollars, for

which he has executed and delivered to the said George S. Pepper his promissory note dated March 22d, 1875, and payable five (5) years after date, with interest at the rate of nine per centum per annum, payable semi-annually, for which ten coupon notes for $450 each have been executed and delivered, and being desirous to secure the punctual payment of said note when and as the same shall (respectively) become due and payable, with all interest and costs due and accruing thereon, does therefore execute these presents:

Now, therefore, this indenture witnesseth: That the said parties of the first part, for and in consideration of the premises
570 aforesaid, and, further, the sum of one dollar in lawful money of the United States, to them in hand paid by the said parties of the second part at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released, and conveyed, and do by these presents grant, bargain, sell, alien, enfeoff, release, and convey, unto the parties of the second part or the survivor of them, his heirs and assigns, the following-described real estate, situate in the city of Washington, District of Columbia, to wit: Part of lot numbered two (2), in square numbered one hundred and sixty-four (164), beginning for the same forty-three feet nine inches ($43\frac{9}{12}$) east of the southwest corner of said square, thence west forty-three feet nine inches ($43\frac{9}{12}$) to the southwest corner of said square; thence northwesterly along the line of Connecticut avenue about eighty feet ten inches ($80\frac{10}{12}$) to the south line of original lot three (3); thence northeasterly at right angles to Connecticut avenue along the line of lot three (3) about eighty-five (85) feet to intersect a line drawn due north from the point of beginning, and thence due south to the point of beginning, together with all
571 the improvements, ways, easements, rights, privileges, and appurtenances to the same belonging or in anywise appertaining, and all the estate, right, title, interest, and claim whatsoever, whether at law or in equity, of the said parties of the first part of, into, or out of the said piece or parcel of land and premises:

To have and to hold the said piece or parcel of land and premises, with the appurtenances, unto and to the use of the said parties of the second part or the survivor of them, his heirs and assigns—

To and upon trusts, nevertheless, hereinafter mentioned and declared—that is, in trust to permit the said Alexander R. Shepherd, his heirs or assigns, to use and occupy the said described premises and the rents, issues, and profits thereof to take, have, and apply to and for their sole use and benefit until default be made in the payment of said note or any instalment of interest due thereon or any proper cost, charge, commission, half commission, or expense in and about the same.

And upon the full payment of all of said note and the interest thereon and all other proper costs, charges, commissions, half commissions, and expenses, at any time before the sale hereinafter
572 provided for, to release and reconvey the said described premises unto the said Alexander R. Shepherd, his heirs or assigns, at their cost.

And upon this further trust: That upon default being made in the payment of the said note or any instalment of interest due thereon or any proper cost, charge, commission, half commission, or expense in and about the same, then and at any time thereafter to sell the said piece or parcel of land and premises at public auction, in front of the premises, after at least twenty days' notice of the time, place, and terms of sale by advertisement in some one or more of the newspapers printed and published in the said city of Washington; which said terms of sale shall be as follows, viz: The amount of the indebtedness then due, with interest, cost, & expenses, in cash, and the balance at twenty-four (24) and thirty (30) months, for which the notes of the purchaser, bearing interest at the rate of six per centum per annum from the day of sale and secured by a deed of trust on the property sold, shall be taken. A deposit of one thousand ($1,000) dollars shall be required of the purchaser at the time of sale, and all conveyancing and revenue stamps shall be at
573 the expense of the purchaser.

And upon this further trust: Upon full compliance with the terms of sale to convey the property sold in fee simple to the purchaser or purchasers thereof at his, her, or their cost and expense and without any liability to see to the application of the purchase-money, and of the proceeds of said sale or sales, first, to pay all proper costs, charges, and expenses, and to retain as compensation a commission of five per cent. on the amount of said sale or sales; secondly, to pay whatever may then remain unpaid of the said note and the interest thereon to the time of said sale, whether the same shall be due or not; and, lastly, to pay the remainder, if any, to said Alexander R. Shepherd, his heirs or assigns.

And the said Alexander R. Shepherd does hereby covenant with the said parties of the second part or the survivor of them, his heirs and assigns, that the buildings on said parcel of land shall be kept insured during the continuance of this trust in some good and responsible fire insurance company or companies in the sum of ten thousand ($10,000) dollars, and the policy or policies of insurance be assigned to the said parties of the second part as trustee
574 under these presents; and, further, that in case the said Alexander R. Shepherd, his heirs or assigns, shall fail to keep said property so insured, then the same may be insured for the amount aforesaid by the said George S. Pepper or the holder of said notes, and the amount of premium paid shall be considered a part of the expense of said note secured hereby, in default of payment of which the said parties of the second part or the survivor of them, his heirs and assigns, shall have power to sell said property hereby conveyed as aforesaid, and shall dispose of the proceeds of sale as hereinbefore provided.

In testimony whereof the said parties of the first part have hereunto set their hands and seals on the day and year first hereinbefore written.

Signed, sealed, and delivered in the presence of—

ALEX. R. SHEPHERD. [L. S.]
MARY G. SHEPHERD. [L. S.]

The word- "for which ten coupon notes for $450 each have been executed and delivered" were inserted between the 16th & 17th lines on first page before execution.

D. R. BELL,
Notary Public.

575 DISTRICT OF COLUMBIA, } ss:
County of Washington, }

I, D. R. Bell, a notary public in and for the county aforesaid, do hereby certify that Alexander R. Shepherd and Mary G. Shepherd, his wife, parties to a certain deed bearing date on the twenty-second day of March, A. D. 1875, and hereto annexed, personally appeared before me, in the county aforesaid, the said Alexander R. Shepherd and Mary G. Shepherd, his wife, being personally well known to me to be the persons who executed the said deed, and acknowledged the same to be their act and deed; and the said Mary G. Shepherd, wife of said Alexander R. Shepherd, being by me examined privily and apart from her husband and having the deed aforesaid fully explained to her, acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and notarial seal this — day of March, A. D. 1875.

D. R. BELL,
Notary Public.

Received for record on the 24 day of March, A. D. 1875, and recorded in Liber No. 777, folio- 489, &c., one of the land records for Washington county, in the District of Columbia, and examined by—

S. WOLF, *Recorder.*

576 EXHIBIT G. P. No. 3.

Mr. Alex. R. Shepherd in ac. with Geo. S. Pepper.

1874.					
June 4	To loan*d* 35,000, @ 9%.		1874.		
Dec. 1	To 6 mos. int.	1,575 00	Dec. 3	By cash	1,575 00
1875.			1875.		
June 1	To 6 mos. "	1,575 00	June 16	By cash	1,575 00
Dec. 1	To 6 mos. "	1,575 00	1876.		
1876.			Jan. 10	By cash	1,575 00
June 1	To 6 mos. "	1,575 00	June 1	By cash	1,575 00
Dec. 1	To 6 mos. "	1,575 00			
1877.					
June 1	To 6 mos. "	1,575 00			
Dec. 1	To 6 mos. "	1,575 00			
	Interest on interest:				
1878.					
April 1	1 y'r 4 mo. int. on 1,575.	189 00			
" 1	10 mo. int. on 1,575	118 13			
" 1	4 mo. int. on 1,575	47 25			
1875.					
March 22	To loan of 10,000, @ 9%.		1875.		
Sep. 22	To 6 mo. int.	450 00	Sept. 22	By cash	450 00
1876.			1876.		
Mar. 22	To 6 mo. int.	450 00	Mar. 22	By cash	450 00
Sept. 22	To 6 mos. int.	450 00	Sep. 22	By cash	450 00
1877.					
Mar. 22	To 6 mos. int.	450 00			
Sep. 22	To 6 mos. int.	450 00		By balance due	6,490 13
1878.					
Mar. 22	To 6 mos. int.	450 00			
	Interest on int.:				
1878.					
Mar. 22	To 1 y's int. on 450	40 50			
	To 6 mo. int. on 450	20 25			
		14,140 13			14,140 13

As the date at which the loans were made, & also rate of interest, & the dates at which the last instalments of interest were paid —, you will easily be able to verify the above statement. The remaining coupons will also show the state of interest ac.

577 EXHIBIT G. P. No. 4.

1877.

OFFICE COLLECTOR OF TAXES,
DISTRICT OF COLUMBIA.

1877 Sales Book 4, page 6, of lot 2 & *int.*, square No. 164.

To amount sold for at sale for taxes August 14, 1877, assessed in name of Alex. R. Shepherd ---------- $943 95
Interest, at the rate of ten per cent. per annum, from day of sale to date of redemption ----------

Amount required to redeem ---------- $

Received payment,

—— ——, *Collector*,
By —— ——.

J. S. P.

578 EXHIBIT G. P. No. 5.

WASHINGTON CITY.

Folio 2.

Alexander R. Shepherd to the District of Columbia, Dr., for tax on real estate for the year ending June 30, 1878.

Total tax, 1.50 per $100 assessed valuation.

Square.	Lot.	Value of lot.	Value of imprs.	Total assessed value.
164	Of 2	$116 74	$45,000	$566 74

To all of tax ---------- $850 11
To penalty, — per cent. ----------

$

Received payment,

—— ——, *Collector.*
By —— ——.

E. W., W. G.

579 EXHIBIT G. P. No. 6.

A. C. Bradley, attorney-at-law, Washington, D. C.

MARCH 14, 1878.

Geo. S. Pepper, Esq.

DEAR SIR: I have received your order of March 6, 1878, calling upon me as trustee to advertise and sell Mr. Shepherd's house under a deed of trust. Mr. Philip has showed me the deed of trust—my first acquaintance with it—and communicated your instructions to him. Upon referring to Mr. Shepherd I am informed that he can pay the interest by July, perhaps earlier, and that the trust does not cover the entire area of the house, cutting off about twenty feet of the rear.

The times are very unpropitious for the sale of any property, especially so valuable a piece as the one covered by the trust, and I think that under all the circumstances that it would not be just to advertise at present.

Yours resp'y, A. C. BRADLEY.

580 *Summons to Answer.*

In the Supreme Court of the District of Columbia, the 11th day of April, 1878.

Subpœna to Answer.

GEORGE S. PEPPER, Complainant, *against* ALEXANDER R. SHEPHERD *et al.*, Defendants. } No. 6201. Eq'y Dock. 18.

The President of the United States to, 1, Alexander R. Shepherd & Mary C., his wife; 2, Andrew C. Bradley; 3, Wm. H. Philip; 4, George Taylor; 5, Wm. F. Mattingly; 6, Samuel Bacon; 7, Samuel Cross, defendant-.

You are hereby commanded to appear in this court at its first special term occurring twenty days after service of this subpœna and answer the exigency of the bill this day filed and entitled as above under pain of attachment and such other process of contempt as the court shall award.

Witness D. K. Cartter, chief justice.

R. J. MEIGS, *Clerk*,
By M. A. CLANCY, *Ass't Clerk.*

MEMORANDUM.—That the defendant- herewith served *is* to
581 enter their appearance in this suit in the clerk's office on or before — day — which this writ is returnable; otherwise the bill may be taken for confessed.

Marshal's Return.

Sum'd all April 12th, 1878.

F. DOUGLAS, *Marshal.*

Answer of W. F. Mattingly. Filed May 6, 1878. R. J. Meigs, Clerk.

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
ALEX. R. SHEPHERD *et al.* } No. 6201, Equity.

The seperate answer of William F. Mattingly, defendant.

For answer to said bill, or so much thereof as I am advised it is material and proper for me to make answer unto, I say as follows:

I admit that I am cotrustee with the defendant, Andrew C. Bradley, under the 2nd deed of trust for $10,000 mentioned in said bill, and have no further interest in or connection with this cause other than as such trustee.

I deny that the said plaintiff ever, in writing or otherwise, ordered and requested me to advertise said real estate for sale under
582 said deed of trust. As to the other matters alleged in said bill I can neither admit nor deny the same, and, having answered fully, pray to be hence dismissed with costs.

WM. F. MATTINGLY.

I, Wm. F. Mattingly, do swear that I have read the foregoing answer signed by me & know the contents thereof; that the facts therein stated as of my personal knowledge are true, and those stated upon information and belief I believe to be true.

WM. F. MATTINGLY.

Subscribed & sworn to before me this 6th day —, A. D. 1878.

R. J. MEIGS, *Clerk*,
By R. J. MEIGS JR., *Ass't.*

Answer of A. C. Bradley. Filed Jan. 4, 1878. R. J. Meigs, Clerk.

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
ALEXANDER R. SHEPHERD *et al.* } No. 6201, Eq. Dock.

The separate answer of Andrew C. Bradley to the bill of complaint of the above-named plaintiff.

This defendant, saving and reserving unto himself all manner of benefit and advantage of exception to the manifold errors
583 and imperfections in said bill contained, for answer thereunto, or unto so much thereof as he is advised is material for him to answer, says:

1, 2, 3, 4. He admits the allegations of the 1, 2, 3, and 4 paragraphs of said bill.

5. He says that the deeds of trust respectively control and bind

and limit the trustees in their powers and estate, and in answer to the 5th paragraph says that those instruments must speak for themselves.

6 & 7. He admits the the averments contained in the 6th and 7th paragraphs of the bill, except that relating to the description of said lot, as to which he is uninformed and can neither admit nor deny.

8, 9, 10. He does not know and can neither admit nor deny the truth of the averments of the 8th, 9th, and 10th paragraphs, except that a demand was made upon him to sell under the first deed of trust for $35,000.00, to which he replied in writing, and the reply is filed with the plaintiffs' bill, marked Exhibit G. P. No. 6. He denies that he has ever been requested to sell under the second deed of trust for $10,000.00, and denies that he has ever refused to sell thereunder. He further says that, to the best of his recollection and belief, he had never seen the second deed of trust
584 until he said it filed with the bill of complaint as an exhibit in this cause; that he was not consulted with reference to placing his name in said deeds of trust or either of them, and knew nothing of the fact or of the existence of said deed of trust until just before the demand was made upon him to sell under the first deed.

11, 12. As to the matter and things charged in the 11th and 12th paragraphs of the said bill, he can neither admit nor deny them, as they are not within his knowledge; and, having fully answered, he prays to be hence dismissed with his reasonable costs.

A. C. BRADLEY.

I, Andrew C. Bradley, do swear that I have read the foregoing answer signed by me, know the contents thereof, and that the facts therein stated of my own knowledge are true, and those stated upon information and belief I believe to be true.

A. C. BRADLEY.

Subscribed and sworn to before me this 4th day of June, A. D. 1878.

R. J. MEIGS,
Clerk, S. C. D. C.,
By R. J. MEIGS, JR., *Ass't.*

585 *Answer of A. R. Shepherd. Filed June* 15, 1878. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
v.
ALEXANDER R. SHEPHERD *et al.* } Equity, No. 6201.

The separate answer of Alexander R. Shepherd to the bill of complaint of the above-named complainant in this cause respectfully shows as follows:

First. This defendant admits the averments contained in the first paragraph of the said bill.

Second. This defendant admits the averments contained in the second paragraph of the said bill.

Third. This defendant admits the averments contained in the third paragraph of the said bill, but says, in addition thereto and in explanation thereof, that at the time the first loan mentioned and described in the third paragraph of the said bill was made and negotiated in the city of Philadelphia between the said complainant, —— ——, who is a citizen of Pennsylvania and a resident of the city of Philadelphia, and this defendant, the said prin-
586 cipal note and the said interest notes in the said paragraph mentioned should be made payable in Philadelphia, and although written and signed in the city of Washington they were actually delivered in the city of Philadelphia to the said complainant, and thereupon the said complainant forwarded his check by mail to the city of Washington, where the same was deposited for collection, and the money thereon was actually paid in the city of Philadelphia; that the said principal note and the said coupon notes belonging thereto are each and all made payable at the Farmers' and Mechanics' National Bank of Philadelphia, Pennsylvania, and that the interest heretofore paid upon said debt has been paid in the city of Philadelphia, and was so required to be paid by the said complainant.

Fourth. In answer to the averments contained in the fourth paragraph of the said bill, this defendant says that he admits the making of the said notes and deed of trust as therein stated, but he says that the loan for which the said note and trust deed were given was made and negotiated in the city of Philadelphia, and that the
587 said principal note and the coupon notes thereunto belonging, although written and signed in the city of Washington, were delivered to the said complainant in the city of Philadelphia, and the said notes are made payable at the Farmers' and Mechanics' National Bank of Philadelphia, in the State of Pennsylvania. The money loaned by the said complainant to the said defendant, mentioned in the fourth paragraph of the said bill, was paid to the defendant by the said complainant by his forwarding by mail to the defendant a check drawn in the city of Philadelphia upon a bank located in said city of Philadelphia, and the said check was actually paid in the city of Philadelphia.

Fifth. In answer to the averments contained in the fifth paragraph of the said bill, this defendant admits that the extracts from the deed of trust in said paragraph set forth are correct, but he is advised by counsel and believes that trustees acting under powers contained in instruments of the character of the said deeds of trust have a large discretion, and that it is their duty to refuse to sell property under unfavorable circumstances, or when the title to the
588 property is unsettled, or when the description of the property is inaccurate or imperfect, or of such a character as would leave a cloud when the title of the purchaser under and by virtue of such powers in a trust deed; and this defendant avers that it was the clear duty of the said trustees to decline to proceed and adver-

tise the said property for sale, as they were directed to do by the said complainant.

Sixth. This defendant admits the averments contained in the sixth paragraph of the said bill.

Seventh. He also admits the averments contained in the seventh paragraph of the said bill.

Eighth. In answer to the averments in the eighth paragraph of the bill, this defendant says that he believes that the said complainant is the owner and holder of the said notes, but he denies that the principal sum of the said notes is now due, but admits that some of the coupon notes, or notes which were given for the interest falling due according to the terms of the said notes, have not been paid; and, further answering the averments contained in this paragraph,

589 the defendant says that it was agreed between the said complainant and this defendant in December, 1876, that this defendant should pay to the said Pepper interest upon the said coupon notes which should remain overdue, in consideration of further and additional indulgence and forbearance on the part of the said complainant, and that the said complainant thereupon agreed that he would extend the time and indulge this defendant sufficiently to enable him to meet his obligations in connection with the said loan.

Ninth. In answer to the averments contained in paragraph nine, this defendant says that it is true that the said property has been sold for the taxes for the year ending June 30, 1877, but he says that in consequence of legislation recently made, much of the said sums due for takes to the government of the District of Columbia has been remitted and that the failure to pay the said taxes has decreased the amount thereof and operated for the benefit of all parties concerned; the title to the said property has not been jeopardized in any manner by reason of the said tax sale, because the property

590 was purchased by the authority of the District of Columbia, and no deed has been made nor is a deed likely to be made to the District of Columbia or to any other person in pursuance of such sale. Further answering the allegations in this paragraph contained, the defendant says that it is not true that the taxes for the year ending June 30, 1878, were due and payable at the time of the filing of this bill.

Tenth. In answer to the tenth paragraph of the said bill, this defendant says that it is not true, as therein alleged, that he has neglected to keep the said property insured; he says, on the contrary, that he has kept the property insured, and that if the said Pepper has procured insurance upon the said property he has done so at his own risk and expense, and not because of any fault or neglect upon the part of this defendant.

Eleventh. In answer to the averments contained in the eleventh paragraph of the bill, this defendant says that it is not true that the interest of the said complainant has been prejudiced in consequence of the non-payment of interest and taxes; that the said agreements

591 of this defendant to pay the said complainant interest upon the said coupon or interest notes was for the purpose of giving

this defendant further and additional time to enable him to pay off the said interest without sacrificing or endangering his said property.

He further says that the said property is very valuable; that it actually cost more than four times the amount of money due to the said complainant, together with all the taxes in arrears, and that the complainant is amply secured, notwithstanding the delay in the payment of a few instalments of semi-annual interest. Further answering the said paragraph, he says that, in his opinion, it would be impossible to make a sale and division of the said property under the said deed of trust without irreparable injury to, if not total destruction of, a large portion of the dwelling-house which is erected upon the said lot. He says that he was the owner of lot two (2) in the said square, and held a tax title to lot "A," the fee of the title being in the heirs of Arnold Harris. In September, 1873, this defendant subdivided the principal portion of the said squares, and created thereby lot three (3) by putting together a portion of
592 original lot two (2), and a subdivision lot known as lot "A;" that the said portion of original lot two (2) which is included in the metes and bounds mentioned in the said bill of complaint is only a portion of the said lot three (3); that the said subdivision was made and was put upon the records of the surveyor's office of the District of Columbia about the first day of September, 1873, and that this loan was made and this deed of trust was executed and acknowledged in June, 1874, nine months thereafter, and that the said subdivision lot "A" and the said portion of original lot two (2) were designated on the said plan in the said surveyor's office as lot three (3), square one hundred and sixty-four (164), according to the subdivision made by this defendant. Further answering, the defendant says that he never saw the complainant in his life, and that when the loans aforesaid were made the notes and deeds of trust were prepared by the agents or attorneys of the said complainant, and brought to him for execution, and that he supposed that they had made, and believes they did make, an examination of the said subdivision, and that
593 they are to blame (if blame is to be attached to any one) for the description of the said property contained in the said deed of trust. Further answering, this defendant says that the said dwelling-house would be entirely incomplete without the addition of that portion called the "picture-gallery;" that the servants' apartments and the laundry and drying-room, &c., &c., are underneath the said portion of said dwelling-house, as well as the heating apparatus for a large portion of the house, and that if the said lot "A," which is not included in the deed of trust of the said complainant, shall be separated from that portion which is included in the said deed of trust to the complainant, a dividing line would not only take off the said "picture-gallery," but would take off and destroy a portion of the back part of the main dwelling-house; and, further answering, this defendant says that after the execution and acknowledgement of the said deeds of trust to the said complainant, he negotiated an additional loan upon the said property from one Mercy Maria Carter for the sum of $35,000.00, and that the payment thereof was se-

594 cured by a deed of trust, bearing date some time in the year 1875, to L. J. Davis and James E. Fitch; that said deed of trust constitutes an encumbrance which comes in immediately after the encumbrance of the said complainant upon the main portion of the said building, but that the said deed of trust to Davis and Fitch as aforesaid covers the entire property included in lot three (3), according to this defendant's said subdivision of square one hundred and sixty-four (164), and that the beneficiary under the said deed of trust is entitled to the preservation of the said property in its original form; and, in addition to this, the said deed of trust to the said Cross, Taylor, and Bacon covers the entire piece of property, improvements and all, and that the creditors secured by the said deed of trust last named are entitled to have the property preserved intact.

The title to the said lot "A," according to the subdivision of the said square one hundred and sixty-four (164), made by ——, does not now and never did belong to this defendant. This defendant did heretofore purchase what is called a "tax title" to the
595 said subdivision lot "A," but the said tax title turned out to be void and of no effect. Subsequently, negotiations were entered into with the heirs of the said Arnold Harris for the purpose of purchasing the fee to the said lot, but no conveyance thereto has ever been consummated, which fact would, in the event of a sale under the said deed of trust, constitute a cloud upon the title to the purchaser.

Twelfth. In answer to the allegations contained in the twelfth paragraph of the said bill this defendant says that he denies that there ever was any understanding between him and the said Pepper touching the quality of real estate to be included in the incumbrance or description of the property, and denies, therefore, that the said complainant has any right to enforce the collection of any portion of his claim out of said subdivision lot "A," or has any right, lien, or encumbrance thereon.

Further answering, this defendant says that he is advised by counsel and believes that the said transactions with the said Pepper, having been made in the city of Philadelphia, the money
596 having been paid there, and the contracts themselves to be performed there, are and were at the time of the inception thereof governed and controlled by the laws of the State of Pennsylvania, and he is advised and believes and therefore charges that by the laws of the State of Pennsylvania the rate of interest charged for the use of the said money by the said complainant and reserved by virtue of the said notes is unlawful, and that the said contracts are void and of no effect except for the purpose of securing the payments of the original investment, together with — six per cent. per annum thereon; and this defendant says that if an account shall be stated between the said complainant and this defendant touching the said loans it will be ascertained, as he believes, that he has already paid to the said Pepper much more money than the said Pepper is entitled to have and receive from him on account of the interest due upon the said loans, and he thereupon, for this additional

reason, denies that the said Pepper is entitled to the relief which he p-ays in the bill of complaint, or any relief in the premises, and
597 that at all events his interests and rights in regard to the said property are subordinate to those of the subsequent encumbrances hereinbefore named, and that before any sale could be made of the said property the rights and interest of all the creditors in and to the said property ought to be adjusted; and, having fully answered, this defendant begs leave to be hence discharged with his reasonable costs.

ALEXANDER R. SHEPHERD.

In presence of—
B. LEWIS BLACKFORD.

ENOCH TOTTEN,
Sol'r for Def't Shepherd.

DISTRICT OF COLUMBIA, } ss:
County of Washington, }

Alexander R. Shepherd, being first duly sworn, doth depose and on his oath say that he has read the foregoing answer by him subscribed and knows the contents thereof; that the facts therein stated upon personal knowledge are true, and that the facts therein stated upon information and belief he believes to be true.

ALEXANDER R. SHEPHERD.

598 Subscribed and sworn to before me this 15th day of June, A. D. 1878.

B. LEWIS BLACKFORD,
Notary Public.

Replication. Filed Sep. 12, 1878. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
A. R. SHEPHERD *et al.* } Equity, No. 6201.

The plaintiff hereby joins issue with the defendants and will hear the cause on bill, answer, and evidence against the defendants.

WALTER S. COX,
GEO. A. HYDE, *Sol's.*

599 Filed Ja'y 9, 1879.

Sup. Court of the District of Columbia.

GEORGE S. PEPPER
v.
A. R. SHEPHERD *& al.*

Interrogations for Geo. S. Pepper.

1. State your name, age, residence, and occupation.

2. Are you the complainant in this cause?

3. State the circumstances under which you made the loans mentioned in the bill of complaint.

4. Who made application to you for said loans?

5. By whom was the deed of trust given to secure said loans prepared?

7. What description of the property included in the deed of trust was given to you and what representations made in regard thereto, and by whom?

8. Were Kilbourn and Latta your agents in the negotiations of said loans?

600 9. Did you employ any agent; and, if so, whom?

10. What propositions were made to you in relation to the payment of the interest?

11. How was interest, in fact, paid on said loans?

12. What payments have been made on account of said loans and what is the exact amount now due?

13. Had you any agreement with A. R. Shepherd as to payment of interest on the instalments of interest in arrears?

14. Did you pay any premiums for the renewal of policies of insurance on Shepherd's property covered by the deeds of trust; &, if so, what amount?

15. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them or that may be material to the subject of your examination or the matters in question in this cause? If
601 yea, set forth the same fully and at large in your answer.

WALTER S. COX,
Sol's for Complainant.

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
v.
A. R. SHEPHERD *et al.* } Equity, No. 6201.

Cross-Interrogations to be Propounded to George S. Pepper.

1. Have you in your possession the notes made by A. R. Shepherd in your favor? If you have please produce the same and attach them to this your deposition as exhibits, or, in lieu of the originals, exact copies thereof, certified by the commissioner.

2. When you shall have answered the seventh interrogatory put to you by your own counsel, if you have not already stated it there, state who made such representations, when they were made,
602 and what evidence have you thereof. If you have any written evidence produce it and have it attached by the commissioner to your deposition as an exhibit.

3. When did you first become acquainted with Mr. Kilbourn, and when did you first become acquainted with Mr. Latta?

4. If, in answer to the 13th interrogatory put to you by your

counsel, you say you had an agreement with Mr. Shepherd, please state whether it was a verbal or written agreement. If a written agreement, attach the evidence of such agreement to your deposition; and if the agreement consists in letters passing between you and Mr. Shepherd, attach all the letters from Mr. Shepherd to you to your deposition as a part thereof.

5. Were you not advised by counsel in this city that the transaction with Mr. Shepherd was unlawful because it was a Pennsylvania transaction and void under the statutes of that State; and didn't William F. Mattingly, Esquire, advise you to that effect?

6. If you had any correspondence with Mr. Mattingly rela-
603 tive to the subject-matter of this loan, produce his letters to you and attach the same to this your deposition.

7. How much money have you loaned in this District on real-estate security, and who acted for you in making such investments? Did you have counsel in the matter or matters; and, if you did, who was he? And, if you had more than one, give the name of such.

8. Do you know any other matter or thing or circumstance connected with this transaction that would be of benefit to the defendants in the case? If you do, state it as fully and particularly as if each fact were specially and particularly inquired of herein.

ENOCH TOTTEN.
Att'y for Shepherd.

604 *Plea of Usury Overruled. Filed May* 12, 1879. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
ALEXANDER R. SHEPHERD. } 6201.

This cause coming on to be heard & having been assigned by counsel and considered by the court, it is, this 12 day of May, 1879, ordered & adjudged & decreed that the plea and defence of usury be, & the same is hereby, overruled and disallowed, & that James M. Johnston be, and is hereby, appointed trustee in the place and stead of Andrew C. Bradley in the deed of trust, & recorded in Liber —, folio —, of the land records for the District of Columbia and referred to in the term in this cause. This decree is without prejudice to all other rights of defendant.

By the court:

MACARTHUR, *Justice.*

605 *Appeal to Gen. Term. Filed May* 14, 1879. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
v.
ALEX. SHEPHERD *et al.* } Equity, No. 6201.

And now comes the defendant, Alexander R. Shepherd, by his counsel, and appeals to the general term from the decree passed in this cause on the 12th day of May, 1879.

ENOCH TOTTEN,
For Def't Shepherd.

Petition for Injunction: Filed July 24, 1879. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
ALEXANDER R. SHEPHERD *et al.* } No. 6201, Eq. Doc. 18.

To the supreme court of the District of Columbia, holding an equity court for said District:

The petition of Alexander R. Shepherd, one of the defendants in the above-entitled cause, respectfully shows—

That the plaintiff filed his bill in this cause, in which, among other matters, he alleged that he was secured as to certain debts alleged to be due from petitioner to him by two certain deeds of trust conveying the real estate and premises described in
606 said deeds of trust to two trustees, respectively, and that he had demanded of said trustees that sale be made of said land and premises according to the terms and provisions of said trusts, but that one of said trustees refused so to do; and, among other matters of relief, he prayed that a trustee be appointed in the place and stead of the trustees under said deeds of trust with directions and authority forthwith to execute all the trusts reposed in them, respectively, by said deeds of trust; that thereafter the cause was regularly heard upon bill, answers, and testimony, and thereupon, on the 12th day of May, 1879, a decree was rendered substituting James M. Johnston as trustee "in the place and stead of Andrew C. Bradley in the deed of trust, recorded in Liber —, folio —, of the land records for the District of Columbia and referred to in the record of this cause. This decree is without prejudice to the other rights of defendant."

That thereupon and within the time prescribed by the rules of practice of this court this defendant and petitioner took his appeal to the general term of this court and filed his bond for the cases of appeal; that, notwithstanding the said appeal and the evi-
607 dent defects and want of definiteness in said decree, the said James M. Johnston and one William H. Philip, a co-defend-

ant in said cause, have advertised said property for sale under and by virtue of a deed of trust recorded in Liber 754, folio 51 *et seq.*, of the land records of the District of Columbia, and by virtue of the decree above recited, passed in this cause May 12th, 1879, said sale to take place on Friday, the 8th day of August, 1879, at 6 o'clock p. m., as will appear by a copy of said advertisement hereto annexed and marked Exhibit S; and your petitioner charges that the said act of the said Johnston is entirely without authority, and the said Johnston has no power to act in the premises, inasmuch as the said decree does not vest in him the title powers and trusts conferred upon said Bradley by the deed of trust under which the said land and premises are so advertised for sale and as the said appeal suspends until its determination whatever powers the said decree confers.

And your petitioner further charges that the time selected for said sale is the most unfavorable of the whole year for such pur-
608 pose, it being in the very midst of the heated term, and the great majority of persons who might be able to buy such valuable property have left the city.

And your petitioner refers to the pleadings and proceedings had in this cause, and begs leave to read the same as part of this petitioner.

Wherefore your petitioner prays that the said James M. Johnston and William H. Philip be restrained and prohibited from advertising the said property for sale and from offering for sale or selling the same.

ALEXANDER R. SHEPHERD,
By A. C. BRADLEY.

ENOCH TOTTEN,
For Def't Shepherd.

DISTRICT OF COLUMBIA, *ss:*

Andrew C. Bradley, being duly sworn, says that the above petition by him signed as attorney-in-fact for Alexander R. Shepherd has been read by him, and that the facts therein stated of his personal knowledge are true, and those stated upon information received from others he believes to be true.

A. C. BRADLEY.

609 Subscribed and sworn to before me this 24th day of July, 1879.

W. P. BELL,
Notary Public.

EXHIBIT S.

Advertisement.

Sale of very valuable improved real estate situated on the northeast corner K street and Connecticut avenue.

Under and by virtue of a deed of trust dated June 1, A. D. 1874, and duly recorded in Liber 754, folio 51 *et seq.*, of the land records

of the District of Columbia, and by virtue of a decree passed on the 12th day of May, A. D. 1879, by the supreme court of the District of Columbia in cause No. 6201, equity docket 18, wherein George S. Pepper is complainant and Alexander R. Shepherd *et al.* are defendants, and by direction of the holder of the notes by said deed of trust secured, the undersigned will sell at public auction to the highest bidder, in front of the premises, on Friday, the 8th day of August, A. D. 1879, at 6 o'clock p. m., the following-described real estate situate in the city of Washington, District of Columbia, to wit:

610 Part of lot numbered two (2), in square numbered one hundred and sixty-four (164), and bounded and described as follows, viz: Beginning at a point on North K street forty-three feet and nine inches ($43\frac{9}{12}$ feet) east of the southwestern corner of said square and running thence west on K street forty-three feet and nine inches ($43\frac{9}{12}$ feet) to said southwestern corner of said square; thence northwesterly along the line of Connecticut avenue about eighty feet and ten inches ($80\frac{10}{12}$ feet) to the south line of original lot numbered three (3), in said square; thence northeasterly and at right angles with said avenue and along the line of said lot three about eighty-five feet to intersect a line drawn due north from the point of beginning, and thence due south to the point of beginning, together with all the improvements, ways, easements, rights, privileges, and appurtenances to the same belonging or in anywise appertaining.

Terms of sale as prescribed by said deed of trust as follows, viz: The sum of twenty thousand dollars in cash; a further sum of twenty thousand dollars, with interest thereon at the rate of nine per cent. per annum, in twelve months after the day of date, for

611 which the note of the purchaser, secured by a deed of trust upon the property sold, shall be taken, and the balance at twenty-four and thirty-six months, for which the note of the purchaser, bearing interest at the same rate of six per centum per annum from the day of sale and secured by a deed of trust on the property sold, shall be taken. A deposit of one thousand dollars shall be required of the purchaser at the same time of sale, and all conveyancing shall be at the expense of the purchaser. If the terms of the sale are not complied with within five — from the day of sale the trustees reserve the right to resell the property at the risk and cost of the defaulting purchaser after ten days' notice in the Evening Star newspaper.

Sep. 20.

WILLIAM H. PHILIP,
JAMES M. JOHNSTON,
Trustees.

THOMAS DOWLING, *Auctioneer.*

Summons to Answer. Filed July 25, 1879. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia, July 24, 1879.

GEORGE S. PEPPER, Complainant,
against
A. R. SHEPHERD, Defendant. } No. 6201, Equity Docket.

The President of the United States to William H. Philip — James M. Johnston, defendant-:

612 You are hereby commanded to appear in this court at its first special term, occurring twenty days after services of this subpoena, and answer the exigency of the petition this day filed and entitled as above, under pain of attachment and such other process of contempt as the court shall award.

Witness D. K. Cartter, chief justice.

R. J. MEIGS, *Clerk, &c.*,
By R. J. MEIGS, JR., *Ass't Clerk.*

MEMORANDUM.—That the defendant- herewith served *is* to enter their appearance in this suit in the clerk's office on or before the day at which this writ is returnable; otherwise the bill may be taken for confessed.

Services acknowledged.

W. H. PHILIP,
Per J. M. JOHNSTON.
JAMES M. JOHNSTON.

Restraining Order. Filed July 24, 1879.

Hearing on the prayer of said petition for injunction is fixed for September 2d, 1879. Until then you are restrained as prayed.

By order of the court:

MACARTHUR, *Justice, &c.*

613 *Motion to Dissolve Restraining Order. Filed July* 25, 1879. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
ALEXANDER R. SHEPHERD *et al.* } In Equity. No. 6201.

And now comes William H. Philip and James M. Johnston, by Nath'l Wilson, solicit'r, and move the court to dissolve and annul the restraining order passed by the court on the 24th day of July, 1879.

NATH'L WILSON, *Sol'r.*

Order Modifying Restraining Order. Filed July 26, 1879. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
ALEXANDER R. SHEPHERD *et al.* } No. 6201, Equity Doc.

Upon consideration of the motion of complainant to dissolve the restraining order issued in this cause on July 24, 1879, it is by the court, this 26 day of July, 1879, ordered that said restraining order be, and the same is hereby, modified so as to permit William H. Philip, one of the trustees named in the deed of trust recorded in Liber 754, folio 51, of the land records for the District of Co-
614 lumbia, and James M. Johnston — substituted in the place and stead of Andrew C. Bradley, as trustee under said deed of trust, and said Philip & Johnston, trustees, are hereby directed to postpone the sale of the real estate mentioned in said deed of trust & heretofore advertised to take place on August 8, 1879, until the 9th day of September, 1879, provided the said sale be advertised from this time until the 9th day of September, 1879, once a week in two newspapers printed and published in the District of Columbia, and daily for the three days next preceeding said day of sale.

By the court:

MACARTHUR, *Justice.*

Order Dissolving Restraining Order. Filed Sep. 6, 1879. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
ALEXANDER R. SHEPHERD *et al.* } 6201, Eq.

This cause coming on to be heard upon the petition for injunction filed July 24th, 1879, and the same having been argued by counsel and submitted and duly considered, it is by the court,
615 this sixth day of September, A. D. 1879, ordered that the restraining order granted upon the said petition be, and the same is hereby, dissolved, and that the injunction be, and the same is hereby, denied.

By the court:

MACARTHUR, *Justice.*

616 In the Supreme Court of the District of Columbia, this 20th day of December, A. D. 1878.

GEORGE S. PEPPER
vs.
ALEX. R. SHEPHERD *et al.* } No. 6201, Eq. Doc. 18.

Met, pursuant to notice hereto attached, in the office of Walter S. Cox, Webster Law building, No. 505 D St. N. W., Washington, D. C., on this 20th day of December, A. D. 1878, at 2 o'clock p. m.

Present: Walter S. Cox, counsel for complainant; Enoch Totten, counsel for defendants, and James M. Latta and Samuel Cross, witnesses on behalf of complainant.

HARTWELL P. HEATH, *Examiner.*

In the Supreme Court of the District of Columbia, this 20th day of December, A. D. 1878.

GEORGE S. PEPPER
vs.
ALEX. R. SHEPHERD *et al.* } No. 6201, Eq. Doc. 18.

By Mr. W. S. Cox:

SAMUEL CROSS, being duly sworn, deposes and says that he is a resident of the District of Columbia and is of lawful age; that
617 he is an insurance broker doing business in the city of Washington and District of Columbia; that he effected an insurance on the residence of Mr. Alex. R. Shepherd, which is on the corner of K St. & Connecticut avenue N. W., Washington, D. C., on 27 June, 1878, for $30,000.00, premium for which was $75.00. This was paid upon an old policy, and the insurance had been paid up to this time by Mr. Shepherd. This time, 27 June, 1878, it was paid by Mr. W. H. Philips, as agent for the complainant. I notified Mr. Shepherd some time before 27 June, 1878, that I could not pay and more insurance for him without he advanced the money. Mr. Philip came in the day the policy was due and asked if it had been paid. I said that it had not. Col. Philip told me to consider the insurance paid, that he would pay it, which he did in a few days. Mr. Shepherd never paid nor offered to pay that premium. I was under no obligation to advance the money for him. This was not on one policy, but was on several, in different companies. I think there was some insurance for some one else, but this was all the insurance at that time effected on account of Mr. Pepper.

SAM. CROSS.

Subscribed and sworn to before — on this 20th day of December, A. D. 1878.

HARTWELL P. HEATH,
Examiner in Chancery.

618 By Mr. W. S. Cox:

JAMES M. LATTA, being duly sworn, deposes and says: My name is James M. Latta. I am of lawful age, and I was a real-estate broker in the city of Washington, D. C., up to 1877, and for twelve years next preceding was one of the firm of Kilbourn and Latta, and resided in said city. Mr. Shepherd applied to Kilbourn and Latta for a loan on his house on the corner of Connecticut Ave. and K St. N. W., in said city, about 1st June, 1874, for $30,000.00. Knowing that Mr. Pepper had money to loan, we applied by letter to Mr. Pepper for this loan, which he consented to take, provided the papers were all in proper form. When the papers were prepared I took them to Philadelphia, submitted them to Mr. Pepper, and he gave me a check for the amount. I also brought the papers back with me for record. The papers I took were the deed of trust, policy of insurance, notes, and abstract of title, and our estimate of the value of the property. I brought back the deed of trust for record and a check for the amount. The commission- for making the loan were charged to Mr. Shepherd, and I am under the impression that they were deducted from the loan. This was the first loan. I think that
619 the second loan was made in the same way, though I do not recollect distinctly about it. When we made this loan we understood that it covered the entire house from Mr. Shepherd.

(The testimony relating to the understanding from Mr. Shepherd is objected to by Mr. Totten.)

I described the property to Mr. Pepper, and this description included the whole house. Exhibit- 1 & 2 are the deeds of trust, and were prepared in our office. We were the agents of Mr. Shepherd in this transaction. We were in no way the agents of Mr. Pepper, nor did we receive any compensation from him.

Cross-examined by Mr. TOTTEN:

Mr. John Bull, our cashier, wrote one of the deeds of trust and Mr. John F. Olmstead, one of the firm, wrote the other. Mr. Olmstead took the acknowledgment of the first one and Mr. Bell took the other. My impression is that I brought over at that time $35,000 for Mr. Shepherd, $20,000 for Mr. Kilbourn, and $20,000 for Mr. Evans. Still I would not be positive about the two last amounts. If I brought over the sums for the others there were probably more than one check, as some of the money was furnished by Mr. Pepper's brother-in-law that *that* Mr. Evans borrowed. I am unable
620 to say whether we had ever made any loan for Mr. Pepper before, or, if so, how many. I presume we made loans afterwards for Mr. Pepper. I mean by that that we borrowed from Mr. Pepper for other people. Mr. Pepper never employed us to make loan- for him. Mr. Pepper, when others made application to him for money, required our estimate of the value of the property offered, and we gave it for the benefit of the brokers applying.

Q. Did Mr. Pepper inform you that he had money which he desired to invest prior to the transaction mentioned in this case?

A. We were advised that he had money which he wished to invest, but whether Mr. Pepper or some one else I do not know. I don't know when I got the money. I have said that if the check was payable to us the commissions were deducted before the money was paid to Mr. Shepherd. I think the checks were payable in Philadelphia; then were on an institution in Philadelphia. I think I had seen Mr. Pepper prior to these loans; I know I had. I never saw Mr. Pepper in regard to making loan- for him, but I had seen him in regard to making loans for others of him. I certainly used every argument to induce him to loan money here.

Q. Did you give him any assurance that you or your firm
621 would see to it that his money should be secured by good property?

A. I presume we told him that we would present no application for loans to him that were not, in our judgment, desirable loans to make. I am unable to say how long I had known Mr. Pepper prior to this negotiation. My recollection is that I did not know Mr. Pepper to exceed a year before this, but I may have known him for too or three years. I did not write Mr. Pepper's checks; at least I have no recollection of writing them. I presume the same man wrote the notes who wrote the deed of trust. I have not seen the notes.

JAMES M. LATTA.

Subscribed and sworn to before me this 20th day of December, A. D. 1878.

HORTWELL P. HEATH,
Examiner in Chancery.

Adjourned to meet in the office of Walter S. Cox on Tuesday, the 24th day of December, A. D. 1878, at eleven o'clock a. m.

HORTWELL P. HEATH,
Examiner in Chancery.

Met pursuant to adjournment this 24th day of December, A. D. 1878, Tuesday, in the office of Walter S. Cox, at eleven o'clock a. m.

Present: Mr. Walter S. Cox, of counsel for complainant,
622 and Enoch Totten, counsel for defendants, and Messrs. John F. Olmstead and Adolf Cluss, witnesses for complainant.

JOHN F. OLMSTEAD, being duly sworn, deposes and says: I am a resident of the city of Washington, and of lawful age, and am and have been for several years a real-estate broker; am now a member of — Kilbourn & Olmstead, successors of Kilbourn & Latta, and was a member of the latter firm at the time of its dissolution, and had been from 1871. We have in our possession the book of the late firm of Kilbourn & Latta.

Q. You will please produce any books containing any accounts of Kilbourn & Latta with Alex. R. Shepherd relating to certain loans by Geo. S. Pepper, of Philadelphia, to Shepherd in the years 1874 and 1875.

A. I produce the journal of the late firm of Kilbourn & Latta, on which the following entries appear:

Page- 458–9:

June 3, 1875. Cash to George S. Pepper.
June 3, '74. Received from him for Shepherd loan, $35,000.00.

Geo. S. Pepper, loan ac.:

For the note of A. R. Shepherd, dated June 1, 1874, payable five years, int. 9%, payable semi-annually (ten coupon notes for $1,575 each), secured by deed of trust on part of lot 2, square 164, $35,000.00.

623 Loan ac. to A. R. Shepherd:

For above-described note of A. R. Shepherd, $35,000.00.

A. R. Shepherd to sundries:

Commissions on Pepper loan	$1,000	
" on int. on Barry order	8 75	
		$1,008 75
Am't bro't for'd	1,008 75	
John Stearns	$1,159 10	
Kilbourn, Latta & Olmstead	2,324 85	
H. Kilbourn	60 65	
Cash p'd John O. Evans (cl'k, 157, R.)	12,000	
To " him to bal. ac. (cl'k 156, R.)	18,427 40	
		$34,998 75

On page 528:

MARCH 24, 1875.

Loan ac. to A. R. Shepherd:

For his note, dated Mar. 22, '75, & paym't in 5 y'rs, int 9%, pay't semi-annually, secured on p't lot 2, sq. 164, $10,000.00.

George S. Pepper to loan ac.:

For above note of A. R. Shepherd—ins. policies for $10,000—A. C. Bradley & W. F. Mattingly, trustees, $10,000.00.

A. R. Shepherd to sundries:

Cash p'd for recording deed of trust, 2.50	2 50

George S. Pepper for his check to order of Shepherd, $10,000.00.

624 Commission ac.:

Commis. on loan	250	
M. Ashford, ex'g title	20	
		270

Exhibit G. P. No. 1 is the deed of trust dated June 1, 1874, and was filled up by Mr. John Ball, cashier of our firm.

Exhibit G. P. No. 2 is deed of trust dated March 22, '75, and was filled up by me.

Q. State from whom you got the description of the property given in the deed of trust.

A. I am unable to state; it seems to be a copy of the first deed of trust. Our custom was to copy the description of the property from the abstract of title, but I cannot say that it was done in this case. I cannot say who made the abstract of title, but I suppose Mr. Ashford did; I don't know whether or not. I knew how much ground was embraced in the deeds of trust.

J. F. OLMSTEAD.

Subscribed and sworn to before me this 24th day of December, A. D. 1878.

HARTWELL P. HEATH,
Examiner in Chancery.

Adjourned to meet in same place on Friday, the 27th day of December, A. D. 1878, at 12.30 o'clock p. m., in order that Mr. Cluss might prepare certain plates and plans that it was deserved to have.

625 HARTWELL P. HEATH,
Examiner in Chancery.

Met pursuant to adjournment in the office of Walter S. Cox, on Friday, Dec. 27, 1878, at 12.30 p. m.

Present: Walter S. Cox, counsel for complainant, and Adolf Cluss, a witness on behalf of complainant.

ADOLF CLUSS, being by me duly sworn, says: I am of lawful age; a resident of the city of Washington, in the District of Columbia, and by profession an architect and civil engineer. I prepared the plans and specifications for the house *or pad* lot 2, sq. 164, now occupied by Alex. R. Shepherd. The paper marked "A. C. No. 1" is a copy of the official plates in the surveyor's office of the District of Columbia showing subdivision of part of square No. 164, made by Alex. R. Shepherd, and showing also a previous subdivision made by the heirs of G. C. Grammar *et al.* Paper marked "A. C. No. 2," now show- me, is a copy of the ground plan of the house of Alex. R. Shepherd as it was designed by me and actually constructed between the years 1872 and 1874, which correctly shows the situation and dimensions of the house of Alex. R. Shepherd with reference to the lots before mentioned. I have read the description of the property in the deed of trust, marked "G. P. No. 1," and filed
626 with complainant's bill in this cause, and find that the northern line of the property so conveyed, which runs northeasterly at right angles to the east line of Connecticut avenue, cuts off the northern part of the picture gallery attached to said house to the depth of about seven feet three inches on the east side and about seventeen feet on the west side, as shown in paper "A. C. No. 2."

The part thus cut off is by no means necessary to the occupation of said house as a dwelling. The picture gallery has light from the top entirely, and the basement under the gallery is plentifully supplied with light on both sides—east and west.

ADOLF CLUSS.

Subscribed and sworn to before me this 27th day of December, A. D. 1878.

HARTWELL P. HEATH,
Examiner in Chancery.

The above deposition of Adolf Cluss, with the exhibits therein referred to, was by me presented to Mr. Enoch Totten to know whether or not he desired to cross-examine Mr. Cluss, whereupon he said that he did not wish to cross-examine Mr. Cluss, and Mr. Cox, for complainant, thereupon closed his testimony.

HARTWELL P. HEATH, *Examiner.*

627 In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
ALEX. R. SHEPHERD *et al.* } Equity, No. 6201.

DISTRICT OF COLUMBIA, }
County of Washington, } *ss:*

Be it remembered, that at an examination of witnesses begun and held on the 10th day of February, A. D. 1879, when the within depositions were taken, I, Frank H. Howe, an examiner in chancery, did cause to be personally present, at my office in the city of Washington, in said District, the within-named Hallet Kilbourn and Alexander R. Shepherd, to testify on the part and behalf of the defendant in the above-entitled cause; and I do hereby certify that in pursuance of the within notice the annexed depositions were taken down and by me reduced to writing in the presence of and from the statements of the several witnesses at the time and place herein designated, and were then and there by me read over to the witnesses and by them subscribed in my presence and in the presence of the counsel who were then and there attending, the witnesses having been by me first duly sworn to tell the truth, the whole truth, and nothing but the truth touching the matters at issue in said cause.

628 I further certify that I am not of counsel for either of the parties to said cause or in any manner interested therein.

FRANK H. HOWE,
Examiner in Chancery.

Washington, D. C., March 25, 1879.

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
v.
A. R. SHEPHERD *et al.* } Equity, No. 6201.

Please take notice that on Monday, the 10th day of February, 1879, at the hour of two o'clock p. m., I shall proceed to take testimony in

behalf of the defendants in the above-entitled cause at my office, Law Building, Fifth street, before F. H. Howe, examiner, &c.

You are invited to be present.

ENOCH TOTTEN,
Sol'r for Def'ts.

To Walter S. Cox, Esquire, sol'r for compl't.

Service of copy of above notice acknowledged this 6th day of February, 1879.

W. S. COX.

629 WASHINGTON, D. C., *February* 10, 1879.

Met pursuant to notice hereto attached. Present: Mr. Walter S. Cox, counsel for complainant; Mr. Enoch Totten, counsel for defendants.

Adjourned to Thursday, February 13, 1879, at two o'clock p. m.

WASHINGTON, D. C., *February* 13, 1879.

Met pursuant to adjournment. Present: Mr. Cox, for complainant; Mr. Totten, for defendants.

HALLET KILBOURN, produced and sworn on behalf of the defendants, deposes as follows:

Examination by Mr. TOTTEN:

Q. What is your oame?
A. Hallet Kilbourn.
Q. What is your business?
A. Real-estate broker.
Q. In what business were you engaged in 1873, '74, and '75?
A. Same business.
Q. Did you have anything to do with the loan made by Mr. Pepper, the complainant in this cause, on the property of Mr.
630 Shepherd, corner of K street and Connecticut avenue, in this city?
A. Yes, sir.
Q. Well, state what it was.

A. I met Mr. Pepper in Philadelphia in negotiating a loan on our property in the same block as Gov. Shepherd, and he said to me that he had considerable money to put out, and he wanted to know if I could suggest any good loans. I mentioned that perhaps Governor Shepherd, who was building a house in the same block as that on which I had negotiated to have a loan, would like a loan, and perhaps at the same time I suggested other parties. He told me to look into the matter and report anything that was proper. When I returned to Washington I spoke to Governor Shepherd. I told him I had been negotiating a loan and that I could get a loan for him; that the rate was nine (9) per cent. The Governor said he did not want any at that rate at present. In the course of a few weeks the Governor spoke to me then about the matter and said that if

he could get a loan at eight and a half (8½) per cent. he would take it. I wrote to Mr. Pepper to that effect. The loan at (8½) per cent. was declined, and the Governor finally agreed to accept the loan at nine. That is my recollection of it. I think Mr. Latta went
631 on with the papers and brought home the draft of the first loan.

Q. Now state who Mr. Latta was.

A. He was a partner of mine at that time.

Q. Can you give the date when you first became acquainted with Pepper?

A. I think in the latter part of 1873.

Q. Well, your first transaction with him related to your own property?

A. Yes, sir. I was brought into communication with Mr. Pepper through one Mr. E. R. Jones, of Philadelphia.

Q. Where did you see Pepper?

A. In Philadelphia.

Q. Did you go over there?

A. I did.

Q. You saw him about what?

A. I went over to see him the first time in regard to a loan on our property corner of Seventeenth and K streets.

Q. Can you state anything about the manner in which the money was paid to Shepherd?

A. Well, I cannot. It is all entered on the books. There were two loans by Mr. Pepper to Governor Shepherd.

Q. Mr. Latta swears very positively and repeatedly in his deposition that your firm was the agent of Shepherd, and not of Pepper. What is your version of that?
632 —. I stated the facts about the first negotiation. Mr. Shepherd paid us a commission on the loan.

Q. It is usual in the District of Columbia for the borrower to pay the commission, anyhow, isn't it?

A. I believe it is.

Q. Don't you know it is?

A. There may be exceptions, but that is the general rule.

Q. It is the general rule and it is the general custom, isn't it?

A. Yes, sir.

Q. Did you make an application to Shepherd to loan him money or did Shepherd make an application to you to borrow money?

A. In this instance I first told Governor Shepherd about the loan I was making and of the circumstance of this man's (Pepper's) suggesting that he had other money, and that I had told Mr. Pepper that perhaps Governor Shepherd, who was building a house larger than ours in the same block, might desire a loan.

Q. And what did he say?

A. And I mentioned the names of others to Pepper, I believe, and he told me to see the gentlemen and report. I think one was Mr. Evans. About his row on Vermont avenue, when I first stated the circumstance to Mr. Shepherd he declined to take it at
633 that rate. Then several weeks afterwards—I don't remem-

ber how long—Governor Shepherd said that if he could get the money at eight and one-half per cent. he would take some. I don't remember the amount now.

Q. What advice did you give Shepherd, if any?

A. I don't know that I advised him. I merely stated that I was getting money there—a good place, long time—and that the man had plenty of money, and I thought it was a good opportunity for him (Shepherd) if he wanted any money. I told the Governor that I had mentioned this to him without any authority from the Governor, as perhaps I did of Mr. Evans.

Q. Mentioned it to Pepper?

A. Yes, sir; mentioned his name to Mr. Pepper as perhaps wanting money, as he was building a large house in the same block as myself, and, knowing that Governor Shepherd had occasionally the use of money—borrowing money—I took the liberty of suggesting him to Mr. Pepper.

Q. Well, after this negotiation had been completed, did you go to Philadelphia after the terms had been arranged with Shepherd?

WITNESS: Did I go to Philadelphia with reference to this transaction?

Mr. TOTTEN: Yes, sir.

A. I think not.

634 Q. Did Latta?

A. Yes, sir; Mr. Latta went.

Q. You think Latta brought the checks back?

A. That is my recollection by looking at the books, one check for Governor Shepherd for the avails of that loan; the books show that. The first loan was for $35,000.00 and the next $10,000.00. I am speaking now of the $35,000.00 loan. That check was payable to our order. I think we disbursed it all.

Q. How did you disburse it—according to the book account?

A. Yes, sir.

Q. Well, did it all go to Shepherd except your commission?

A. My present recollection is that we paid it out in two or three sums, I presume, on Governor Shepherd's order some way or other.

Q. All on account of this particular loan?

A. All on account of this loan?

Q. Did you ever see Mr. Pepper in the District of Columbia?

A. I never saw Mr. Pepper in any place but Philadelphia.

Q. Do you remember how you got the money on those checks?

A. They were placed to our credit in our bank by our endorsement—the first one was. I think that was to our order. I

635 am not certain about the second.

Q. Did Pepper pay you anything for your services in this matter?

A. No, sir.

Q. Who prepared the deeds of trust in the two loans?

A. I think they were prepared at our office and then submitted to Mr. Philip and Mr. Mattingly.

Q. Why did you submit them to Philip?

A. Under instructions from Mr. Pepper.

Q. Have you got those instructions with you?

A. I have some letters here (producing papers).

Q. Who is Mr. William H. Philip?

A. He is a lawyer, I believe, in this city. The gentleman that Mr. Pepper designated to me in conversation in Philadelphia as well as in this letter (exhibiting) as the person who was recommended to him as a proper party to examine all papers with reference to all loans made here.

Q. As a matter of fact Mr. Olmstead, who was then a clerk in your office, wasn't he?

A. I don't know whether he was a clerk at that time or had an interest.

Q. At all events Mr. Olmstead wrote out these deeds of trust?

A. I don't remember.

Mr. Cox: No; Mr. Bull wrote one and Mr. Olmstead the other.

Mr. TOTTEN:

636. Q. How did you get the description of the property that went into those deeds of trust? Do you remember how you arrived at the description of the property?

A. That I do not. In the usual way, I suppose—from plates and plans. I don't know whether that way or whether from the abstract.

Q. Who made the abstract?

A. I presume Mr. Ashford, but I don't remember in this District case.

Q. The property itself was familiar to you and Latta and Mr. Olmstead?

A. Yes, sir.

Q. Who was Mr. Bull?

A. Mr. Bull was a clerk in our firm at that time.

Q. You had had a good deal to do with property in that square, haven't you—the property between K and L streets?

A. Yes, sir; we had negotiated a loan on our house and on the center house of Mr. Cluss from Mr. Pepper.

Q. Did Mr. Shepherd have anything to do with the preparation of either of the deeds of trust?

A. Not to my knowledge.

Q. They were prepared in your office and sent to him for execution?

A. I presume that was the way.

637 Q. Do you remember anything about it?

A. I do not.

Q. Well, do you remember how it happened that the rear portion of the property is not covered by the deeds of trust?

A. I do not. I do not know anything about it. I supposed all the property was included; knew nothing to the contrary till this suit.

Q. Assuming that it is not covered by them, whose fault is it if it was not?

A. I do not know. That I cannot say.

Q. The fault of your office—somebody there?

A. My opinion is that when this first loan was negotiated the house was in course of construction, and I don't know whether that part was completed or not. I know the house was not completed.

Q. Do you remember where those checks on which this money was sent to you were dated?

A. Dated in Philadelphia.

Q. Were the checks on some bank in Philadelphia or bank drafts?

A. Bank in Philadelphia.

Q. Who drew them? Do you know that?

A. George S. Pepper.

Q. The complainant here?

A. Yes, sir.

638 Q. They were simply checks, then, drawn on his banking-house in Philadelphia?

A. Yes, sir.

Q. And you got them cashed by depositing them in your bank?

A. The first one was. I don't remember about the second; whether that was payable to our order or to the order of Governor Shepherd our books will show.

Q. If it had been payable to Shepherd you must have got the money on it to get your commission out of it?

A. I presume they were both payable to our order, but I don't remember about it; our books will show.

Q. In your conversation with Mr. Pepper was there anything said between you as to the seeing that this property was all right, in his behalf?

A. No, sir. We were to submit the papers, I think, to Mr. Mattingly and Mr. Philip; Mr. Philip in one case. I don't know whether Mr. Mattingly was the trustee in Governor Shepherd's case or not, but Colonel Philip was the gentleman that he requested to inspect the papers.

Q. Did Colonel Philip actually inspect the deeds of trust?

A. Well, I do not know. I presume that the papers were delivered to Colonel Philip, and I don't know but that he sent them on. I am not positive about that. Maybe Mr. Latta took them

639 on with him. He went on and got the money; but our instructions were to submit them to Colonel Philip.

Q. Did they come back to you after Philip got through with them?

A. I presume they did, but I don't remember the particulars. I don't remember handing them to Colonel Philip, and I don't remember whether he looked at them in the office. I don't remember any particulars about that myself.

Q. What had Mattingly to do with it?

A. I was thinking Mr. Mattingly was one of the trustees there, but it was in my—the other case that Mattingly examined the papers and reported to Mr. Pepper in regard to it, but I don't know as he

did with reference to Governor Shepherd's. I think Mr. Bradley was trustee there.

Q. Are you well acquainted with this property?

A. Yes, sir.

Q. What would be the consequence, in your judgment, if this property was sold out under these deeds of trust, selling only the front part of it, exclusive of the picture gallery? I mean the back building.

A. Well, I don't know as I understand your question. What would be the effect?

Q. I want to know whether property sold under those circumstances would be likely to produce a reasonable price.

640 A. Well, it would undoubtedly interfere with a fair sale, it strikes me, to have a part of the house severed.

Q. Is it all one house, or are there two houses there?

A. All one house, I should think.

Q. (Exhibit- A. C. No. 1 and No. 2 attached to the deposition of Mr. Cluss, witness for the complainant, here shown to the witness.) Will you look at that diagram and see if that is a correct representation of the subdivisions of the property in question? I refer now to Exhibit No. 1, Cluss deposition.

A. (After examination of paper.) Well, I think it is correct. I know it is in regard to this portion of it (indicating), and I suppose it is with regard to that (indicating); I know this (indicating) is; I am familiar with that. Your plat books would have to show it, and I can only say that I believe this is right.

Q. Now, look at Exhibit No. 2 (handing same to witness), which shows the plans of the house. Tell how much of the picture gallery would be sold under this deed of trust, assuming that the deed of trust covers all of the property except the lot marked "B."

A. (After examination.) It is not marked; it should be marked "A."

641 Q. Well, then, state what part of the house or property or improvements are included in lot "A?"

A. About one-third ($\frac{1}{3}$) of the picture gallery.

Q. What is the nature of the walls of the picture gallery?

A. Brick.

Q. How high?

A. Well, twenty-five (25) or thirty (30) feet.

Q. Two stories?

A. Yes, sir.

Q. Now, to take off that portion of it which rests on that lot would be to injure the property largely, wouldn't it?

A. Well, it would effect it considerably, I should say.

Q. Have you any letters which passed between you and Mr. Pepper relating to this loan to Shepherd?

A. I will see. There were several communications from Mr. Pepper with regard to this matter some time subsequent to the loan, not affecting the loan itself.

Q. Well, how many of those have you got?

A. I have several; some with endorsements on by the defendant

Shepherd. Here is one (producing it) relating to Shepherd's loan; it is addressed to Mr. "Kilbourn," you will see; and there are various letters here in regard to the policies of insurance. Here is a letter (producing one) in regard to the ten thousand dollars'
642 loan, policies of insurance, etc., which I don't know is of any importance.

(Witness produces a number of letters, and it — understood between counsel that the solicitor for defendants shall select and introduce any he may think proper, the solicitor for complainant reserving right to interpose any objection to the introduction of the same.)

Cross-examination by Mr. Cox:

Q. In these real-estate transactions are you the agent of the party that pays you or the other party?

A. Well, that is a question, I think, for the court to decide. We do business for both parties, and generally—always, I think—the borrower is the one that pays us our commission.

Q. If I inform you that I have money to loan, and thereupon you find borrowers and are compensated by them for getting the loan, do you think I give you more than the opportunity to make the loan to them and be paid by them for it?

A. I represent you to this extent, that through my influence, etc., I find a place for you to invest your money, but according to
643 the rule and custom prevailing the borrower is the only one that I charge

Q. It is the custom for the reason that the borrower is the only one that employs you and pays you?

A. The borrower is the only one that ever pays us, and I presume that we have had in our experience more applications from persons to borrow than solicitations from parties having money for us to put out. I presume that in the majority of cases the applications have been from borrowers.

Q. And according to custom it is the borrower who employs you instead of the lender?

A. He is the one that pays us.

Q. And in general principles the man that pays is the principal and the man that is paid is agent?

A. The broker is a sort of "middle man" between the parties.

Q. If he is the agent of both isn't he paid by both?

A. No, sir; it is the borrower that pays.

Q. The man that gets the money pays?

A. Yes, sir; the man that gets the money pays.

Q. This description of Governor Shepherd's property was not furnished you by M. Pepper or by Mr. Philip, was it?

A. I think not.

644 Q. Was it taken from the abstract or papers furnished by Mr. Shepherd?

A. My recollection is that Governor Shepherd did not furnish us with any paper. I don't know, in fact, but that we applied for the abstract for him or whether we got the description from the plat

books. I don't remember any distinct conversation it regard to the property with Governor Shepherd or, in fact, with anybody.

Q. If you had any interview with Mr. Philip on the subject there was no question then made about the discription comprehending the whole property?

A. No, sir. In fact I did not know myself until recently that it didn't include all. I didn't know anything about it.

Q. The part that would be cut off from the picture gallery is not at all necessary to the use and enjoyment of the dwelling property, is it?

A. Well, they could reside in the house if considerable of it were cut off.

Q. If the whole of the gallery were cut off?

A. Yes, sir; and they could live in a portion of the house if it were cut in the middle: it is a pretty large building.

Q. Was your loan negotiated before Governor Shepherd's?

A. It was.

645 Mr. Cox: My impression was that it was not.

WITNESS: Well, I got another loan, and that may have been subsequent to the Governor's.

HALLET KILBOURN.

ALEXANDER R. SHEPHERD, produced and sworn on his own behalf, deposes and says:

Examination by Mr. TOTTEN:

Q. Are you the defendant in this case, or one of them?

A. I am.

Q. Will you not state generally how this loan came about, so far as the relations to it of Kilbourn & Latta existed?

A. I was passing up Fifteenth street one day in May, I think, 1874, and Kilbourn came out of his office door and hailed me and said that he had just gotten a loan on his house and the gentleman from whom he had gotten the loan was desirous of making further loans, and that he had suggested to him that probably I would like a loan on the house which I was then building for a residence. I asked the rate of interest, and he said nine (9) per cent. I
646 said that was too much interest to pay on a house to live in. Some time afterwards he (Mr. Kilbourn) renewed the application, and, as I was a little pressed for money, I told him that I would take it, and the papers were prepared by Mr. Pepper's agents. Mess. Kilbourn & Latta, who had all to do with it, brought — to me for signature, and I signed and received the money from them.

Q. Did you have anything to do, either directly or indirectly, with the preparation of either of these deeds of trust?

A. Nothing more than the Angel Gabriel.

Q. Were you consulted as to the proper description of the property?

A. Not at all.

Q. Was there anything said about what property it was to cover?

A. Nothing whatever, except just the general remark that was made by Mr. Kilbourn that he thought I could get the loan on that house.

Q. At the time of this loan what other liens were upon the house?

A. None other. (After a pause.) I think there was a trust on a portion of a lot owned by Mr. Moore.

Q. On which part of the property?

A. That was on the front part.

647 Q. What became of that lien?

A. That was released.

Q. Was there any complication about the rear lot called "lot D," on Connecticut avenue?

A. None that I know of. The history of the lot is this: I purchased this lot "A;" I think it is from Mr. William H. Todd; so one day the purchase — made at the directors' meeting of the National Metropolitan Bank. I asked him what he would take for it, and he said a certain price. I closed with him and asked him about the title. He said that the title had been perfected through a tax sale, and that his son, William H. Todd, Jr., who was a lawyer, would give me an abstract to that effect—to the effect that this sale having been made and the parties representing the owners having drawn the surplus from the tax office, it made a *bona fide* sale and passed a *bona fide* title. I think Mr. George W. Riggs was the representative of this estate and drew the money, and the certificate of Mr. Todd, Jr., was to the effect that it passed a perfect title.

Q. Well, did you find out anything to the contrary afterwards?

A. A suit was about to be brought by the heirs through Mr. Selden, trustee, which has never been settled.

648 Q. The people who were claiming title through Mr. Selden were the people who owned the title at the time of the tax sale?

A. Yes, sir; they were the heirs of Arnold Harris.

Q. That matter has not been adjusted, you say?

A. No, sir.

Q. And that property is only a tax title?

A. Yes, sir; that is the state it is in.

Q. So far as you are concerned?

A. Yes, sir; so far as I am concerned.

Q. Now, how much of the property which you occupy as a residence is covered by this deed of trust to Pepper, or these two deeds under which he is proceeding here?

A. Well, I should think nearly one-half of the rear portion of the house or picture gallery.

Q. And all of the front part?

WITNESS: What did you say?

Mr. TOTTEN: How much is included in it?

A. About one-half; more than one-half, possibly.

Q. This deed of trust included the front house and one-half of the picture gallery?

A. Yes, sir.

Q. What is the hight of that picture gallery?
A. Three stories, including the cellar.
Q. How wide is it?
A. Twenty-five feet wide and fifty-five feet long.
Q. What is the construction of that picture gallery?
649 A. It is the only way of getting through into the heating apparatus.
Q. Have you a place of egress and ingress in the rear?
A. Yes, sir.
Q. Is this beyond the line of lot "A?"
A. Yes, sir.
Q. It is on the front side of lot "A?"
A. There is an entrance to the house there, and an entrance to the gallery underneath. The lower portion of the gallery is occupied as the sleeping quarters of the servants and the laundry. The basement is occupied as a cellar for coal and fuel.
Q. Are there any encumbrances on the entire property, including the whole thing?
A. Mrs. Mercy Maria Carter—now Gray—has a trust on the whole.
Q. Who is the trustee?
A. I think Lewis J. Davis and Mr. Fitch are the trustees.
Q. Where does Mrs. Gray live?
A. She has moved to California recently.
Q. From there?
A. She has moved to California from here.
Q. She lives in California now?
A. Yes, sir; she is there. Her husband is a Baptist minis-
650 ter, and she is there with him on missionary work.
Q. Do you know that she holds the notes?
A. Yes, sir.
Q. How many are there?
A. Only one, for $35,000.00.
Q. Are there any liens on top of that?
WITNESS: On top of liens?
Mr. TOTTEN: Yes, sir.
A. None that I know of.
Q. Can you give the date of her encumbrance? How long was it after Pepper's was made?
A. I should think it was made some time about August, 1875.
Q. Has any portion of the $35,000.00 loan from her been paid?
A. No, sir.
Q. How about the interest?
A. The interest is in arrears.
Q. That loan of hers covers—I mean the deed of trust to secure her loan—covers the whole property and all this property you speak of as being a tax title?
A. Yes, sir; the fact that it was a tax title was not developed until after that loan was made by her.
Q. You say the people who own that tax title or who owned it are the liens of whom?

—. Arnold Harris.

651 Q. Where do they live?

A. They are scattered over the South in two or three different States, I believe.

Q. What is the value of this property, Mr. Shepherd—all of it, together?

A. The house and ground cost me in the neighborhood of one hundred and seventy-five thousand dollars ($175,000.00) without the furniture.

Q. What estimate do you place upon the property now, taking into the estimate the decrease in the value of real estate in Washington since you built your house?

A. Well, I don't think property of that kind has decreased any. To a person who could afford to live in that house it is worth just as much as it ever was; of course it must be a person of independent means.

Q. How much ought that house to sell for?

WITNESS: The house?

Mr. TOTTEN: The whole property, assuming that the title to all of it is good.

A. I think the house ought to sell for $130,000.00 or $140,000.00.

Mr. COX: At the present time?

WITNESS: Yes, sir; at the present time. I think that any one who could afford to live in it would think it a cheap house at

652 $200,000.00 with the furniture. I rate the furniture at about one-half cost; that has, of course, suffered more than the other. The property or real estate is appreciating all the time, because it is in the growing section of the city and within a few blocks of the President's house. I think the real estate must appreciate; it cannot fall off any. The furniture has, of course, depreciated.

Mr. TOTTEN:

Q. To go back to the question of the making of this loan, Governor, how did you get this money, actually?

A. Kilbourn & Latta paid it to me.

Q. How did they pay it to you?

A. In their own checks.

Q. On what bank?

A. I think one of the checks was on Riggs; of the others I cannot state; one of them was on Riggs. They were both on banks in Washington.

Q. They were drawn on banks in this city?

A. Yes, sir.

Q. You are sure of it?

A. Yes, sir.

Q. They didn't deliver Pepper's check to you, did they?

A. No, sir; none of Pepper's; not a check.

Q. Did you ever see Pepper's checks for this loan?

A. No, sir; I am only familiar with his handwriting by seeing it attached to the letters he has written.

653 Q. You have paid large sums of interest on this loan, have you not?

A. I have paid interest, I think, for a couple of years.

Q. Where did you pay it?

A. Paid it in Philadelphia; and he wouldn't receive a Washington check, and returned it to me on one or two occasions, and I had to send a draft on a bank in Philadelphia for it.

Q. In both these transactions did you regard Kilbourn & Latta as Pepper's agents or as your agents?

(Question objected to by Mr. Cox.)

—. As Pepper's agents; the proposition, as I understood it, came from him through these parties.

Q. What business were they engaged in?

A. Real-estate brokers.

Q. Who attended to the business so far as you were concerned?

A. Well, I have related all that in the first part of my testimony. They made a proposition, in the first place, to loan me a certain amount of money; they fixed the papers and I signed them.

Q. You attended to your own business, didn't you?

A. Yes, sir.

Q. Mr. Latta has testified here that the firm were your agents and not the agents of Pepper. What have you to say about that?

A. Well, that he is a liar.

Mr. TOTTEN: Oh, no; not so strong.

Mr. COX: Not true.

654 WITNESS: Well, not true; he knew that it was not true when he said it.

Mr. TOTTEN:

Q. How are Kilbourn & Latta paid for their services?

A. They were paid by me the general commission.

Q. They were paid by you by their taking the money out?

A. They deducted it from the money.

Q. What is the usual custom in Washington of paying commissions for the negotiating of loans?

A. The needy fellows always pay it, I guess; the borrowers.

Q. Have you had any correspondence with Mr. Pepper touching the payment of interest which was not paid at maturity?

A. Yes, sir; he wrote me along about 1876 some time that I was in arrears, and, as he understood, I was embarrassed; that if I would pay the interest on the interest——

Mr. COX: Have you got the letter?

WITNESS: Yes, sir; I can produce the letter.

Mr. TOTTEN:

Q. What was concluded between you?

A. I wrote him word that I would pay him interest on the interest.

Q. Have you paid him any?

A. No, sir.

Q. No interest on interest?

A. No, sir.

655 Q. Have you got those letters which you can produce?

A. Yes, sir.

Q. If an account shall be taken between you and Mr. Pepper at the rate of six per centum per annum will there be anything due to Mr. Pepper, charging you up with six per cent. on the loan and giving you credit for the amount of money you have paid on account of interest?

A. I should think there would be a small amount.

Q. How much?

A. I cannot say exactly.

Q. This suit is based on the theory that you are to pay six per cent. per annum?

A. Nine per cent. per annum.

Q. Suppose this property shall be sold under these deeds of trust of Mr. Pepper, in what predicament will Mrs. Gray be left, taking into consideration the fact that Pepper's securities cover only a portion of the property?

A. I should think her interests would be destroyed unless she were strong enough to protect them by purchasing the property.

Q. Suppose the property covered by these deeds of trust is bid in for Pepper's advantage or for his benefit, leaving the back part of the gallery out, standing by itself, what would that property be worth—the rear part of the picture gallery which is excluded from Pepper's loan?

656 A. The building would be utterly destroyed.

Q. It would be of no value at all, would it?

Q. None whatever, and the main house would be cut off from any means of getting fuel in to heat it—that is, without some means were improvised.

Cross-examination by Mr. Cox:

Q. Governor, in what state of completion was the house when this loan was negotiated?

A. In 1874—during the first — of 1874—I think the roof was about being put on.

Q. Was the picture gallery built then?

A. Oh, no.

Q. Do I understand you to claim that because this deed does not embrace the picture gallery Mr. Pepper should not have his claim enforced?

A. Yes, sir; because it would destroy the house.

Q. Do you mean that he should not get his money?

A. No, sir.

Q. How could he get his money unless the claim were enforced?

A. The only way to get the money is to get some one to buy the house or to make arrangements so that the house can be rented and thus pay his interest.

Q. What means can you propose to remedy this to secure

657 the full value of the house on a sale for the benefit of all parties concerned?

A. My theory would be that I might be able to make other arrangements.

Q. In other words, that it ought not to be sold until some other arrangements can be made?

A. Yes, sir; until——

Q. And at present you can suggest no other means than getting some man to buy the house for the full value?

A. Unless I can realize money from other property that I own to pay Mr. Pepper what I owe him.

Q. Please examine this exhibit of the statement of the balance (handing paper "Ex. G. P. No. 3 attached to bill to witness) and see if that is a correct statement.

A. (After examination of the paper.) I presume so.

Q. Did you get the coupons returned to you when these payments were made?

A. Yes, sir; the coupons were returned.

Q. Since what time has no interest been paid?

A. Well, by this showing (referring to exhibit) on the $35,000.00 loan no interest has been paid since June 1st.

Q. June 1st; what year?

A. 1876; and on the $10,000.00 loan none since September 22, 1876. I presume this is correct, as the next six months' pay-
658 ment on the $35,000.00 loan would have matured the 1st of December, 1876, and my suspension took place on the 16th of November, 1876, and my recollection is that about the time of the maturity of that Mr. Pepper wrote me that he would give me such time as I might need if I would agree to pay interest on the interest.

Q. Where is the heating apparatus of the house?

A. The heating apparatus is all under the cellar—different parts of it.

Q. Where is the furnace part of it?

A. The furnace part is under the dining-room.

Q. The coal cellar is where?

A. Under the picture gallery—at the end of the picture gallery. Coming up through the alley-way there is a shoot from which the coal supplies the house.

Q. Is there a cellar under the whole house?

A. Yes, sir.

Q. A full story high?

A. No, sir; only fourteen feet high.

Q. There is a cellar under the basement?

A. Yes, sir.

Q. When did you first ascertain that the deeds of trust did not include the whole property?

A. I cannot say exactly; probably in 1878.

Q. When you executed the deeds did you suppose that they embraced the whole.

A. I did. ALEX. R. SHEPHERD.

659 Sup. Court of the District of Columbia.

GEORGE S. PEPPER
v.
A. R. SHEPHERD *et al.* } 6201, Eq.

Interrogatories for George S. Pepper.

1. State your name, age, residence, and occupation.
2. Are you the complainant in this cause?
3. State the circumstances under which you made the loans mentioned in the bill of complaint.
4. Who made the application to you for said loans?
5. By whom was the deed of trust given to secure said loans prepared?
7. What description of the property included in the deed of trust was given to you and what representations made in regard thereto, and by whom?
8. Were Kilbourn & Latta your agents in the negotiation of said loans?
9. Did you employ any agents; and, if so, whom?
10. What propositions were made to you in relation to the payment of the interest?
11. How was interest in fact paid on said loans?

660 12. What payments have been made on account of said loans, and what is the exact amount now due?

13. Had you any agreement with A. R. Shepherd as to payment of interest on the instalments of interest in arrears?
14. Did you pay any premiums for the renewal of policies of insurance on Shepherd's property covered by the deeds of trust; &, if so, what amount?
15. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

(Signed) WALTER S. COX,
Solicitor for Complainant.

661 In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
v.
A. R. SHEPHERD *et al.* } Equity, No. 6201.

Cross-interrogatories to be propounded to George S. Pepper.

1. Have you in your possession the notes made by A. R. Shepherd in your favor? If you have, please produce the same and attach them to this your deposition as exhibits, or, in lieu of the originals, exact copies thereof certified by the commissioner.

2. When you shall have answered the seventh interrogatory put to you by your own counsel, if you have not already stated it there, state who made such representations, where they were made, and what evidence have you thereof? If you have any written evidence, produce it and have it attached by the commissioner to your deposition as an exhibit.

3. When did you first become acquainted with Mr. Kilbourn, and when did you first become acquainted — Mr. Latta?

662 4. If, in answer to the 13th interrogatory put to you by your counsel, you say — had an agreement with Mr. Shepherd, please state whether it was a verbal or written agreement.

If a written agreement, attach the evidence of such agreement to your deposition; and if the agreement consists in letters passing between you and Mr. Shepherd, attach all the letters from Mr. Shepherd to you to your deposition as a part thereof.

5. Were you not advised by counsel in this city that this transaction with Mr. Shepherd was unlawful because it was a Pennsylvania transaction and void under the statutes of that State; and did not Wm. F. Mattingly, Esq, advise you to that effect?

6. If you had any correspondence with Mr. Mattingly relative to the subject-matter of this loan, produce his letters to you and attach the same to this your deposition.

7. How much money have you loaned in this District on real-estate security; and who acted for you in making such investments?

663 Did you have counsel in the matter or matters; and, if you did, who was he? And if you had more than one, give the name of each.

8. Do you know any other matter or thing or circumstance connected with this transaction that would be of benefit to the defendants in the case? If you do, state it as fully and particularly as if each fact were specially and particularly inquired of herein.

(Signed) ENOCH TOTTEN,
Att'y for Shepherd.

In the Supreme Court of the District of Columbia the 9th day of January, 1879.

GEORGE S. PEPPER
v.
A. R. SHEPHERD *et al.* } No. 6201, Equity Docket.

The President of the United States to John F. Spencer, Philadelphia, Pa., 200 So. Fifth St., Greeting:

Know you that in confidence of your prudence and fidelity you have been appointed and by these presents you are invested with power and authority to examine complainant as a witness

664 for the complainant in the above-entitled cause upon the interrogatories annexed to this commission; and therefore you are hereby commanded, at a certain day and place or certain days and places to be appointed by you, to cause said witness to come before

you and then and there examine him on oath or affirmation upon the said interrogatories and reduce his testimony into writing, to be signed by said witness, and, having so done, annex the same to this writ, closed up under your seal, and make return thereof into said court with all convenient speed.

Witness D. K. Cartter, chief justice.

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, J-., *Ass't.*

I, John T. Spencer, do solemnly swear that I will well and faithfully perform the duties of the office vested in me by the within commission in accordance with the laws of the United States and of the District of Columbia, so help me God.

JOHN T. SPENCER.

665 CITY OF PHILADELPHIA, } *ss:*
State of Pennsylvania. }

Sworn and subscribed before me, one of the judges of the court of common pleas, No. 3, for the city and county of Philadelphia, by the said John T. Spencer, this eleventh day of January, A. D. 1879.

Witness my hand and the official seal of the said court.

THOM R. FINLETTER,
Judge Court of Common Pleas.

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
A. R. SHEPHERD *et al.* } No. 6201, Equity Docket.

I, John T. Spencer, do solemnly swear that I will to the best of my skill and knowledge truly, faithfully, and without partiality to any or either party, take the examination and depositions of all and every witness and witnesses produced and examined by virtue of any commission directed to me from or by direction of the supreme
666 court of the District of Columbia during the time I may continue by my appointment to act as commissioner upon any interrogatories produced to and left with me by either party before such commission or examination shall be closed.

JOHN T. SPENCER.

CITY & COUNTY OF PHILADELPHIA, } *ss:*
State of Pennsylvania. }

Sworn and subscribed before me, one of the judges of the court of common pleas, No. 7, for the city and county of Philadelphia, by the said John T. Spencer, this thirteenth day of January, A. D. 1879.

Witness my hand and the official seal of the said court.

BAILY MOOT.

1. At the execution of the annexed commission issued out of the supreme court of the District of Columbia empowering me to examine evidences in the cause depending in said court between George S. Pepper, complainant, and Alexander R. Shepherd and others, defendants, I, John T. Spencer, the commissioner
667 therein named, having attended at my office, at No. 200 South Fifth street, in Philadelphia, on the thirteenth and fourteenth days of January, A. D. 1879, and taken the oaths annexed to said commission, did proceed then and there to take the following deposition of George S. Pepper, the complainant in said cause:

The said GEORGE S. PEPPER, being duly sworn and examined — to interrogatories and cross-interrogatories accompanying said commission and herewith returned, deposes and says:

To the first interrogatory: My name is George S. Pepper; I am over sixty years of age, and I reside at No. 1819 Walnut street, in the city of Philadelphia; I am an attorney-at-law, and am now and have been for many years acting as trustee for many of my family, and have had much experience in the matter of investing monies on mortgage on real estate in various cities of the United States.

2. To the second interrogatory: I am the complainant in this case.

3. To the third interrogatory: There were no peculiar circumstances connected with the making of the loans mentioned in
668 the bill of complaint. As well as I can recollect, application was made to me for a loan on A. R. Shepherd's house, in Washington, through E. R. Jones, real-estate broker in this city, the application originally coming from the firm of Kilbourn & Latta, of Washington, with whom the matter was consum-ated.

4. To the fourth interrogatory: I believe the application for the loans were made by Hallet Kilbourn, acting as the agent for A. R. Shepherd.

5. To the fifth interrogatory: I believe the deeds of trust given to secure said loans were prepared by Wm. F. Mattingly, who was strongly recommended for that purpose by Hallet Kilbourn and was wholly unknown to me.

7. To the seventh interrogatory: The property included in the deed of trust was describedt o me as a large, highly finished house, occupied as a dwelling by A. R. Shepherd, complete in all particulars, and H. Kilbourn represented that this house was one of
669 the most costly and expensively finished dwelling- in Washington, having cost about ($120,000) one hundred and twenty thousand dollars; and he made other statements which led me to believe that the premises mortgaged to me were perfect, complete, and a most ample security, and I most certainly believed that my loan covered all the interests of A. R. Shepherd, for had there been a doubt on that point I should not have loaned one dollar on the premises.

8. To the eighth interrogatory: Kilbourn & Latta were not my agents in negotiating the said loans or any other loans, and I have not nor never had any agent in Washington for negotiating loans,

nor have I ever paid any commissions to any one in Washington for such purposes.

9. To the ninth interrogatory: I never have employed any agent in Washington.

10. To the tenth interrogatory: A. R. Shepherd paid the interest due me on my loans with tolerable punctuality until he became financially embarrassed, when he asked for temporary indulgence, promising that payment of the interest would soon be paid.
670 He continued to promise and always failed to pay until I threatened to proceed in collecting the principal of my loans, and then he agreed positively to pay up in full on or before Aug. 1st, 1877, at the same time saying that he would compensate me for my indulgence. I wrote to him in reply that the interest must be paid up in full at that date or I would commence proceedings to collect the principal; as I had accorded him the time asked, I would not wait any longer. Having stated to A. R. Shepherd that I was a great loser by his failure to pay the larger amount of overdue interest, he sent me an agreement in writing, a copy of which is hereto attached and marked Exhibit "A."

11. To the eleventh interrogatory: There were interest coupons accompanying the loans which were payable at the Farmers' & Mechanics' National Bank of this city. At that bank A. R. Shepherd paid what interest has been recovered by me.

12. To the twelfth interrogatory: On the ($35,000) thirty-five-thousand-dollars loan the sum of six thousand three hundred dollars ($6,300) has been paid, and there is still due the sum
671 of eight thousand two hundred and fifty-one $\frac{25}{100}$ dollars ($8,251.25). On the ($10,000) ten-thousand-dollars loan the sum of thirteen hundred and fifty dollars ($1,350) has been paid, and there is still due the sum of two thousand and eighty dollars ($2,080).

13. To the thirteenth interrogatory: When I represented to A. R. Shepherd that by his default in payment of interest I necessarily incurred loss and inconvenience he sent me a memorandum stating that he agreed to pay interest on the overdue interest, but there was no promise or agreement expressed or implied that I should not proceed to collect both interest and principal of my loans in consideration of the agreement offered by A. R. Shepherd to pay interest on the overdue interest. When the loans were agreed upon it was understood by me that the coupons should contain a clause stating that if not paid at maturity the coupons should carry interest on the interest, and I gave H. Kilbourn the form of coupons used in Chicago and St. Louis and elsewhere, but he either inadvertently or intentionally omitted to have the clause printed
672 on the coupons, which I did not see until after the loan was concluded.

14. To the fourteenth interrogatory: I did pay premiums for the renewals of policies of insurance on A. R. Shepherd's property covered by the deeds of trusts, and such premiums paid by me amounted to seventy-five dollars ($75).

15. To the fifteenth interrogatory: I would state by way of reca-

pitulation that there were no peculiar circumstances connected with the loans made to A. R. Shepherd or others in the city of Washington. Application was first made to me by E. R. Jones, sent by H. Kilbourn from Washington, and the papers were drawn by persons, as far as I can recollect, selected or recommended by Kilbourn, as also the counsel for examination of titles, &c. I do not recollect to have seen any of the papers connected with these loans until all was consum-ated and the money paid. The representations made respecting the character and value were made by Kilbourn, as also the descriptions. I never had any agent nor did I know any one in Washington to whom I could apply for aid or advice in these matters. Kilbourn was represented to me to be a highly honorable, wealthy gentleman and an experienced, reliable real-estate broker, and I placed great confidence in his representations of
673 value and the financial ability, &c., of such persons as made application for loans. Mr. Kilbourn led me to believe that the loan to Shepherd was submitted to Philips for his consideration, and it was under this belief that I felt satisfied that it was rightly and lawfully done. It is now so very long, and my memory not being very good, that I cannot speak positively as to certain minor details of my transactions in Washington, but it is very certain that if there be any defects, whether in the description or in any other particulars, the fault lies with Kilbourn and Shepherd.

Answers to Cross-Interrogations.

1. To the first cross-interrogatory: I have, and I will have exact copies attached as desired and marked Exhibit "B" and Exhibit "C."

2. To the second cross-interrogatory: I have already stated that to the best of my knowledge and belief Hallet Kilbourn made the representations relative to the character, quality, and value of A. R. Shepherd's house—partly when on a visit to the city and partly by letter. I have not any letters of H. Kilbourn relative to this subject, having destroyed all letters that I at the time considered
674 of no value, never foreseeing the present extraordinary and most unexpected difficulties.

All the other and important letters were sent to Mr. W. H. Philips and should now be in the possession of Mr. W. S. Cox.

3. To the third cross-interrogatory: I believe I first became acquainted with Hallet Kilbourn in the spring of the year 1874, but I cannot say positively. Kilbourn had already sent an application to E. R. Jones, of this city, for a loan for $13,000, to A. Cluss, architect, in Washington, and I think that I was introduced to Kilbourn by Jones, he speaking of Mr. Kilbourn as a wealthy, highly honorable, and most reliable real-estate broker, and hence my unfortunate confidence in him. I first became acquainted with Latta in this city after the loans to Shepherd were made, I believe.

4. To the fourth cross-interrogatory: The agreement which I received from A. R. Shepherd was written, and a copy of it will be appended to this document and marked Exhibit "A." All the let-

ters of A. R. Shepherd which were in my possession were sent to W. H. Philip, trustee, and I presume are now in possession of Walter A. Cox, my attorney.

5. To the fifth cross-interrogatory: Something was said by
675 Mattingly about making the notes of Shepherd payable in Washington, but I concluded that it would be more convenient and safer for me to have the payments made directly to me than through the agency of another, as I had so arranged all former loans in this manner in St. Louis, Chicago, and elsewhere, believing that the laws of the locality of the mortgaged premises governed all such matters.

6. To the sixth cross-interrogatory: I have not any letters of Mr. Mattingly relative to the subject-matter of this loan, which I much regret.

7. To the seventh cross-interrogatory: I decline to answer the interrogatory as to how much money I may have loaned in the District of Columbia, but will state my loans to Shepherd and Kilbourn constitute a great part of all that I have ever loaned in the District, and also is a very large part of my entire estate. I had no one to act for me on the occasions. The applications for the loans to Kilbourn and Shepherd came through the firm of Kilbourn & Latta, who selected W. F. Mattingly as counsel for titles, drawing up papers, &c. I think that possibly, then, Mattingly was suggested by Kilbourn and accepted by me, although utterly unknown
676 to me. All the trustees except W. H. Philip were selected by Kilbourn and were unknown to me. I suppose that the whole matter had been submitted to and approved by W. H. Philips, and I was much surprised and annoyed on learning from Mr. Philip that he had no knowledge of the matter until recently.

All the loans that I ever made in Washington were made payable in this city, both principal and interest. I cannot recollect to have employed any other counsel in Washington; but certainly no one, unless it be Mattingly, ever suggested that my loans, &c., be made payable in that city, thinking that this was essential to the validity of the notes.

8. To the eighth cross-interrogatory: I do not know anything further connected with this transaction that would be of advantage to the defendants in this case.

GEO. S. PEPPER.

Sworn and subscribed before me this fourteenth day of January, A. D. 1879, at my office, No. 200 South Fifth street, Philadelphia.

JOHN T. SPENCER,
Commissioner.

677 There being no other witnesses to be examined, and neither party desiring further time for the production of his evidence, I therefore closed said commission, and herewith return the same under my hand and seal this fourteenth day of January, A. D. 1879.

JOHN T. SPENCER,
Commissioner.

Commissioner's fee twenty dollars ($20).

EXHIBIT "A."

(Copy.)

Office of Alex. R. Shepherd, Penn. Ave. and 12th street.

WASHINGTON, *Dec. 29th*, 1876.

Geo. S. Pepper, Esq.

DEAR SIR: I will agree to pay 9 per cent. interest on overdue interest on mortgages due you by me, now due or which may become due.

Yours truly, ALEX. R. SHEPHERD.

A correct copy.
GEO. S. PEPPER.

678 At the execution of a commission for the examination of witnesses between George S. Pepper, complainant, and Alexander R. Shepherd and others, defendants, a paper-writing was produced, of which this is a copy, and shown to George S. Pepper and by him deposed unto at the time of the examination.

JOHN T. SPENCER,
Commissioner.

$35,000. WASHINGTON, D. C., *June 1st*, 1874.

Five years after date I promise to pay to the order of George S. Pepper thirty-five thousand dollars, for value received, with interest, payable semi-annually, at the rate of nine per cent. per annum, until paid, ten coupon notes of even date herewith and hereunto attached being given for the interest aforesaid.

Payable at the Farmers' & Mechanics' Nat'l Bank, Philadelphia, Pa.

ALEX. R. SHEPHERD.

[On the margin:] Kilbourn & Latta, real-estate and note brokers. Secured by deed of trust.

679 EXHIBIT "B."

$1,575. WASHINGTON, D. C., *June 1st*, 1874.

Sixty months after date I promise to pay to the order of George S. Pepper fifteen hundred and seventy-five dollars, being six months' interest, at the rate of nine per cent. per annum, due on my promissory note bearing even date herewith.

Payable at Farmers' & Mechanics' Nat'l Bank, Philadelphia, Pa.

Coupon note No. 10.

Due June 1st, 1879.

ALEX. R. SHEPHERD.

Correct.
JOHN T. SPENCER.

$1,575. WASHINGTON, D. C., *June 1st*, 1874.

Fifty-four months after date I promise to pay to the order of George S. Pepper fifteen hundred and seventy-five dollars, being six months' interest, at the rate of nine per cent. per annum, due on my promissory note bearing even date herewith.

Payable at Farmers' & Mechanics' Nat'l Bank, Philadelphia, Pa.
Coupon note No. 9.
Due December 1st, 1878.

ALEX. R. SHEPHERD.

680 $1,575. WASHINGTON, D. C., *June 1st*, 1874.

Forty-eight months after date I promise to pay to the order of George S. Pepper fifteen hundred and seventy-five dollars, being six months' interest, at the rate of nine per cent. per annum, due on my promissory note bearing even date herewith.

Payable at Farmers' & Mechanics' Nat'l Bank, Philadelphia, Pa.
Coupon note No. 8.
Due June 1st, 1878.

ALEX. R. SHEPHERD.

$1,575. WASHINGTON, D. C., *June 1st*, 1874.

Forty-two months after date I promise to pay to the order of George S. Pepper fifteen hundred and seventy-five dollars, being six months' interest, at the rate of nine per cent. per annum, due on my promissory note bearing even date herewith.

Payable at Farmers' & Mechanics' Nat'l Bank, Philadelphia, Pa.
Coupon note No. 7.
Due December 1st, 1877.

ALEX. R. SHEPHERD.

A correct copy.
JOHN T. SPENCER.

681 $1,575. WASHINGTON, D. C., *June 1st*, 1874.

Thirty-six months after date I promise to pay to the order of George S. Pepper fifteen hundred and seventy-five dollars, being six months' interest, at the rate of nine per cent. per annum, due on my promissory note bearing even date herewith.

Payable at Farmers' & Mechanics' Nat'l Bank, Philadelphia.
Coupon note No. 6.
Due June 1st, 1877.

ALEX. R. SHEPHERD.

$1,575. WASHINGTON, D. C., *June 1st*, 1874.

Thirty months after date I promise to pay to the order of George S. Pepper fifteen hundred and seventy-five dollars, being six months' interest, at the rate of nine per cent. per annum, due on my promissory note bearing even date herewith.

Payable at Farmers' & Mechanics' Nat'l Bank, Philadelphia.
Coupon note No. 5.
Due December 1st, 1876.

ALEX. R. SHEPHERD.

At the execution of a commission for the examination of witnesses between George S. Pepper, complainant, and Alexander R. Shepherd and others, defendants, a printed and paper
682 writing was produced, of which this is a copy, and shown to George S. Pepper and by him deposed to at the time of the examination.

JOHN T. SPENCER,
Commissioner.

A correct copy.
GEO. S. PEPPER.

(Copy.)

$10,000. WASHINGTON, D. C., *March 22nd*, 1875.

Five years after date I promise to pay to the order of George S. Pepper ten thousand dollars for value received, with interest, payable semi-annually, at the rate of nine per cent. per annum until paid, ten coupon notes of even date herewith and hereunto attached being given for the interest aforesaid.

Payable at Farmers' & Mechanics' Nat'l Bank, Philadelphia, Pa.

ALEX. R. SHEPHERD.

[On margin:] Kilbourn & Latta, real-estate and note brokers. Secured by deed of trust.

683 EXHIBIT "C."

$450. WASHINGTON, D. C., *March 22d*, 1875.

Five years after date I promise to pay to the order of George S. Pepper four hundred and fifty dollars, being six months' interest, at the rate of nine per cent. per annum, due on my promissory note bearing even date herewith.

Payable at Farmers' & Mechanics' Nat'l B'k, Phila., Pa.

Coupon note No. 10.

Due —— —, 18—.

ALEX. R. SHEPHERD.

At the execution of a commission for the examination of witnesses between George S. Pepper, complainant, and Alexander R. Shepherd and others, defendants, a printed and paper writing was produced, of which this is a copy, and shown to George S. Pepper and by him deposed unto at the time of the examination.

JOHN T. SPENCER,
Commissioner.

A correct copy.
GEO. S. PEPPER.

684 $450. WASHINGTON, D. C., *March 22d*, 1875.

Fifty-four months after date I promise to pay to the order of George S. Pepper four hundred and fifty dollars, being six months' interest, at the rate of nine per cent. per annum, due on my promissory note bearing even date herewith.

Payable at Farmers' & Mech's' Nat'l B'k, Phila., Pa.
Coupon note No. 9.
Due —— —-, 18—.

ALEX. R. SHEPHERD.

$450. WASHINGTON, D. C., *March* 22*d*, 1875.

Forty-eight months after date I promise to pay to the order of George S. Pepper four hundred and fifty dollars, being six months' interest, at the rate of nine per cent. per annum, due on my promissory note bearing even date herewith.

Payable at Farmers' & Mech's' Nal'l B'k, Phila., Pa.
Coupon note No. 8.
Due —— —, 18—.

ALEX. R. SHEPHERD.

685 $450. WASHINGTON, D. C., *March* 22*d*, 1875.

Forty-two months after date I promise to pay to the order of George S. Pepper four hundred and fifty dollars, being six months' interest, at the rate of nine per cent. per annum, due on my promissory note bearing even date herewith.

Payable at Farmers' & Mechanics' Nat'l B'k, Phila., Pa.
Coupon No. 7.
Due —— —, 18—.

ALEX. R. SHEPHERD.

A correct copy.
JOHN T. SPENCER.

$450. WASHINGTON, D. C., *March* 22*d*, 1875.

Thirty-six months after date I promise to pay to the order of George S. Pepper four hundred and fifty dollars, being six months' interest, at the rate of nine per cent. per annum, due on my promissory note bearing even date herewith.

Payable at Farmers' & Mechanics' Nat'l B'k, Phila., Pa.
Coupon note No. 6.
Due —— —, 18—.

ALEX. R. SHEPHERD.

686 $450. WASHINGTON, D. C., *March* 22*d*, 1875.

Thirty months after date I promise to pay to the order of George S. Pepper four hundred and fifty dollars, being six months' interest, at the rate of nine per cent. per annum, due on my promissory note bearing even date herewith.

Payable at Farmers' & Mechanics' Nat'l B'k, Phila., Pa.
Coupon note No. 5.
Due —— —, 18—.

ALEX. R. SHEPHERD.

$450. WASHINGTON, D. C., *March* 22*d*, 1875.

Twenty-four months after date I promise to pay to the order of George S. Pepper four hundred & fifty dollars, being six months'

interest, at the rate of nine per cent. per annum, due on my promissory note bearing even date herewith.

Payable at Farmers' and Mechanics' Nat'l B'k, Phila., Pa.

Coupon note No. 4.

Due —— —, 18—.

ALEX. R. SHEPHERD.

A correct copy.

JOHN T. SPENCER.

687 *Original Bill. Filed Nov.* 14, 1879. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

ALEXANDER R. SHEPHERD
vs.
WILLIAM H. PHILIP, JAMES M. JOHNSTON, GEORGE S. PEPPER. } No. 7052, Eq. Doc.

To the supreme court of the District of Columbia, holding an equity court for said District:

The plaintiff complains as follows:

1. The plaintiff and the defendants Philip and Johnston are residents of the District of Columbia and the defendant Pepper is a resident of the city of Philadelphia, State of Pennsylvania.

2. On the 23rd day of October, 1879, the said defendants, Philip and Johnston, pursuant to an advertisement, a copy of which is hereto annexed and marked Exhibit S. 1 and prayed to be read and considered as part of this bill, pretending to act as trustees under and by virtue of a certain deed of trust dated June 1st, 1874, and recorded among the land records of the District of Columbia in Liber 754, folio 51, and by virtue of a decree of this court passed May 12th, 1879, in cause No. 6201, equity docket 18, wherein said defendant, Pepper, is complainant and this plaintiff and others are de-
688 fendants, as set forth and recited in said aforesaid notice of sale, undertook to sell a certain piece or parcel of land known as part of lot numbered two (2), in square numbered one hundred and sixty-four (164), in the city of Washington, as described in said notice of sale, and, after going through the form of a sale at auction, the property was knocked down to the defendant, Pepper, for the sum of $50,000; and the said Philip and Johnston, as trustees, have since executed and delivered to said defendant Pepper a deed of said land and premises, which is recorded in Liber No. 923, folio 392, to which reference is made as part of this bill.

3. The plaintiff is advised and charges that the acts of the said defendants, James M. Johnston and William H. Philip, were entirely without authority in the premises in advertising and attempting to convey said land, inasmuch as the said Johnston was not constituted one of the trustees by said deed of trust referred to in said published notice, and the said decree referred to in said notice did not confer upon or vest in said Johnston any title, trusts, or powers

under said deed of trust, nor did it substitute said Johnston for and in the place and stead of Andrew C. Bradley under the
689 said deed of trust, nor did it remove the said Bradley from his office of trustee under said deed of trust or divest him of the title, powers, and trusts conferred upon him thereby; and plaintiff refers to the bill of complaint in said equity cause No. 6201 and the said decree passed therein May 12, 1879, as part of this bill.

4. That at the said sale there were no bidders other than those who were acting in the interest of the defendant Pepper, and the only bids made were three in number; the first, $40,000, made by John F. Hanna, attorney for the defendant Pepper; the second, $45,000, made by defendant, William H. Philip, one of the trustees, and the third, $50,000, made by John F. Hanna, attorney for the defendant Pepper; and it was announced by the defendant Johnston and by the auctioneer that the said sale was made subject to all taxes due, which were estimated at $2,700, and that the lot sold by its metes and bounds did not include the rear portion of the building, and a plat was exhibited showing that the rear line of the lot cut off a large portion of the back building, and thereupon the said property was knocked down to defendant Pepper for
690 said sum of $50,000 and the said taxes, making the total amount of the sale, as stated & announced by said trustees, $52,700.00.

5. That the purchaser, the said defendant, Pepper, did not comply with the terms of sale, as required by said deed of trust and by the said notice of sale in any particular, and the said deed from said Philip and Johnston to said Pepper recites that the said Pepper, "being the highest and best bidder there*from* at and for the consideration hereinafter mentioned, because the purchaser thereof, *and* having fully complied with the terms of sale by causing the amount of said consideration, to wit, fifty thousand dollars, less the expenses of said sale, to be credited on said promissory notes secured by said deed of trust."

6. That the said sale was managed solely in the interests of the said defendant, Pepper, by the said trustees, and the price at which the said property was knocked down to him was grossly inadequate.

7. That plaintiff at the time of said pretended sale was the owner of a valuable equitable interest in and to the said property, and he charges that by reason of all the facts and circumstances set forth in the preceding paragraph of this bill the said sale was
691 null and void and should be set aside and the said deed should be cancelled.

The plaintiff therefore prays—

1. That the said sale be set aside by decree of this court, and that the said deed be cancelled.

2. That the defendants and each of them may be restrained by the order and injunction of this court from interfering with the said property or attempting to enforce at law any legal right claimed as a consequence of said sale or deed.

3, That the plaintiff may have such other & further relief in the premises as the nature of his case may demand.

ALEX. R. SHEPHERD.

ENOCH TOTTEN,
Sol'r for Compl't.

692 STATE OF NEW YORK, } *ss:*
City and State *of New York,* }

Alex. R. Shepherd, being by me first duly sworn, says he has read the foregoing bills, and that he knows the contents thereof, and that the same is true according to his best information and belief.

ALEX. R. SHEPHERD.

Subscribed & sworn to before me this 13th day of November, 1879.

GEO. W. CASS,
Notary Public (79), *N. Y. Co.*

STATE OF NEW YORK, } *ss:*
City and County of New York, }

I, Hubert O. Thompson, clerk of the city and county of New York, and also clerk of the supreme court for the said city and county, being a court of record, do hereby certify that Geo. W. Cass, before whom the annexed deposition was taken, was at the time of taking the same a notary public of New York, dwelling in said city and county, duly appointed and sworn and authorized to ad-
693 minister oaths to be used in any court in said State and for general purposes, and that his signature thereto is genuine, as I verily believe.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county the 13 day of Nov'r, 1879.

HUBERT O. THOMPSON, *Clerk.*

Summons to Answer.

In the Supreme Court of the District of Columbia, Nov. 4, 1879.

ALEX. R. SHEPHERD, Complainant, }
against } No. 7052, Equity Docket.
WILLIAM H. PHILIP *et al.*, Defendants. }

The President of the United States to William H. Philip, Isaac M. Johnston, George S. Pepper, defendant-:

You are hereby commanded to appear in this court at its first special term occurring twenty days after services of this subpœna and answer the exigency of the original bill this day filed and entitled as above, under pain of attachment and such other process of contempt as the court shall award.

Witness D. K. Cartter, chief justice.

694 R. J. MEIGS, *Clerk, &c.,*
By R. J. MEIGS, JR., *Ass't Clerk.*

MEMORANDUM.—That the defendant- herewith served *is* to enter their appearance in this suit in the clerk's office on or before the day at which this writ is returnable, otherwise the bill may be taken for confessed.

Answer of Wm. H. Philip & Jas. M. Johnston, Trustees. Filed Dec. 18, 1879. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

ALEXANDER R. SHEPHERD *vs.* WILLIAM H. PHILIP *et al.* } No. 7052, Equity.

The answer of William H. Philip and James M. Johnston to the bill of complainant of Alexander R. Shepherd against them and one other in chancery exhibited.

These defendants, now and at all times hereafter reserving to themselves all benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in said bill contained, nevertheless, for answer thereto or to so much thereof as they are advised it is necessary and ma-
695 terial for them to answer, they say as follows:

1. We admit the averments of the first paragraph of the bill of complaint.

2. We admit that on October 23, 1879, pursuant to advertisement, a copy of which is hereto annexed and marked Exhibit W. H. P. No. 1, and which it is prayed may be read and considered as part hereof, we sold the real estate described in the deed of trust recorded in Liber 745, folio 51.

We deny all the averments in said paragraph two inconsistent with the following statement:

Our power to make said sale was not pretended only, but was a valid and perfect power, and was derived as follows:

The defendant Philip was duly constituted and appointed trustee by the said deed of trust recorded in Liber 745, folio 51, and his power to sell was derived from that instrument. Mr. Andrew C. Bradley having declined to act as trustee under said deed of trust, the defendant, James M. Johnston, was duly appointed by decrees passed in equity cause number 6201 on May 12, 1879, as construed and modified by the decree passed in said cause on July 26, 1879, in the place and stead of said Bradley as trustee under said deed of trust. These
696 defendants were advised and thought that the said decree operated to divest from said Bradley all the title, interest, and powers vested in him by the deed of trust aforesaid and to vest the same in said Johnston as fully and completely as if he had been named as trustee in said deed in the place of said Bradley. These defendants admit that the property was knocked down at said sale to George S. Pepper for the sum of $50,000.00, and the overdue and

unpaid taxes amounting to $2,731.31. In other words, the cost to the purchaser was $52,731.31. In pursuance of this sale, these defendants executed and delivered to said Pepper a deed in fee, recorded in Liber 923, folio 392, conveying to him the real estate mentioned in said deed of trust. These defendants insist that said sale was proper and regular and *bona fide* in all respects, and that the title to said real estate is now vested in said Pepper in fee simple.

3. We deny that our acts were or that the act of either of us was without authority in the premises, and repeat that the defendant Johnston was duly vested with all the title and powers reposed in said Bradley by said deed of trust, and that said Bradley was lawfully removed as trustee in said deed.

697 Further answering this paragraph, we say that the pleadings show, and all parties interested well understood, that the only deed in controversy in said cause was the deed recorded in Liber 754, folio 51, and we beg to refer to and read as part hereof all the proceedings in equity cause number 6201 in support of the statements herein contained.

Further answering this paragraph, we say that on July 24, 1879, the complainant Shepherd filed a petition in said cause praying that the sale of said property then adv'ised by said trustees might be postponed, it being alleged, among other things, that it was then an unseasonable time of the year to sell. On motion being made to dissolve the *ex parte* restraining order which had been granted on said petition, the court on July 26, 1879, reciting in its decree the fact that the defendant Johnston was substituted in the place and stead of Mr. R. C. Bradley as trustee under the deed of trust in Liber 754, folio 51, directed that the said sale should be postponed until September 9, 1879, provided a certain charge was made in the mode of advertising said sale. From this decree there was no appeal.

Subsequently, on September 9, 1879, one Mercy M. C. Gray
698 filed a bill to enjoin said sale on the same alleged defect in the power of these defendants as trustees to sell as is now set up, but this court declined to enjoin the sale, notwithstanding that said Gray claimed the right to sell the whole property (front and rear lot) and to marshal the securities unless said Gray would pay all the accrued costs of advertising and file her bond in the penalty — six thousand ($6,000.00) dollars, conditioned to — same George S. Pepper harmless against any loss or damage caused by suing out the injunction; and said decree further provided that in default of the payment of said costs and filing of said bond on or before October 2, 1879, the said preliminary injunction so conditionally allowed should be dissolved, and said sale permitted to proceed under the said deed of trust recorded in Liber 754, folio 51, and the decree of May 12, 1879, passed in 6201, equity.

In view of the several recognitions by the court of the power of these defendants as trustees as aforesaid to sell the real estate referred to in the bill of complaint in this cause, and the express permission granted to them on at least two occasions to proceed with the said sale, we believed and still believe that all doubt as to our

power had been removed, if any substantial doubt ever in fact existed.

699 4. In answer to the fourth paragraph of the bill we say that there was a large attendance of persons at the sale, and among them were several persons who were pecuniarily responsible and fully able to purchase the property. The first bid, of $40,000.00, was made by Mr. John F. Hanna, as attorney for Mr. George S. Pepper, the holder of the note secured. The next bid was a reserved bid of $45,000.00, made by William H. Philips, not individually, but on behalf of the trustees. This sum had been agreed upon by the trustees prior to the sale as the amount under which (and in the interest of Mr. Shepherd) they would not permit the property to be sold. The third bid, of $50,000.00, was made by Mr. John F. Hanna, as trustee for Mr. George S. Pepper, and the property was thereupon knocked down to Mr. George S. Pepper. It is true that the defendant Johnston announced that the property was sold subject to taxes, the exact amount of which, and not an estimate as alleged, shown by the certificate of the collector of taxes was stated at the sale in order that the purchaser should be fully and accurately advised as to the amount of his bid. This course was necessary because there was no power given to the trustees by and in the deed of trust to

700 pay from the proceeds of sale the overdue taxes, as should have been done. So also it is true that for the purpose of preventing purchasers from being deceived as to the quantity of property purchased the trustees exhibited at the sale an accurate plan prepared by the architect who constructed the said building, showing exactly the property covered by the deed of trust.

The trustees believed and still believe that what was done was strictly in accordance with their duty in the premises, considering the rights of both Mr. Shepherd and Mr. Pepper, and they feel quite confident that the withholding from the company assembled the information that the purchaser would buy subject to $2,731.31 of overdue taxes, and that the rear portion of the lot was not included in the deed of trust, would not only have been unfair to the bidders, but would certainly and very properly have caused the purchaser to decline to comply with the terms of his bid.

Moreover, the trustees do not now understand why Mr. Shepherd should complain that the trustees had withheld information from the bidders which they were clearly entitled to have.

5. In answer to paragraph 5 we say that it would have

701 been folly to have compelled the purchaser to pay the large sum of $20,000.00 in cash and to give his notes for the balance only that the trustees might immediately return the said money and notes to him. The purchaser did pay to the trustees in cash all the money necessary to meet the expenses of sale, commissions, and the like, and paid the overdue taxes as well. We insist that neither the rules of law or any custom requires us to compel the beneficiary to pay over to us the cash and notes, but that the credit on the debt, as recited in this deed of trust, is both in accordance with the law and with the universal custom in such cases.

6. We emphatically deny that the sale was managed solely in the

interest of said Pepper, and state that the interest of Mr. Shepherd was protected, so far as could or ought to have been done by us.

We deny that the property sold for a grossly inadequate price. On the contrary, we refused to sell the property for less than $45,000.00 and taxes, and this we believe is as much as it can be sold for. The assessed value of said property for taxation is $50,215. If the price is affected by the fact that the rear portion of the lot was not sold, it was a circumstance with which these
702 trustees had nothing to do, and *of* which, they are informed by the beneficiary, was first discovered by him long after the deed of trust in his favor had been given.

7. We, on information and belief, deny that Mr. Shepherd had at the time of sale or has now any equitable interest whatever in the said property.

We deny that said sale was null and void, but say that said sale was legal and *bona fide* in all respects.

And, having fully answered, we pray to be hence dismissed with our reasonable costs.

WILLIAM H. PHILIP.
JAMES M. JOHNSTON.

I do solemnly swear that I have read the foregoing answer by me subscribed & know the contents thereof; that the matters stated in said answer of my own knowledge are true, & those stated on information & belief he believes to be true.

JAMES M. JOHNSTON.

I do solemnly swear that I have read the answer by me subscribed and know the contents thereof, and that the facts therein
703 stated upon my personal knowledge are true, and that the facts therein stated upon information and belief I believe to be true.

WILLIAM H. PHILIP.

Subscribed and sworn to before me this eleventh day of December, 1879.

R. B. DU BOIS,
Notary Public.

JOHN F. HANNA, *Def't Sol.*
NATH'L WILSON, *Sol. Counsel.*

Sale of Very Valuable Improved Real Estate Situated on the Northeast Corner K Street and Connecticut Avenue.

Under and by virtue of a deed of trust dated June 1, A. D. 1874, and duly recorded in Liber 754, folio 51 *et seq.*, of the land records of the District of Columbia, and by virtue of a decree passed on the 12th day of May, A. D. 1879, by the supreme court of the District of Columbia in cause No. 6201, equity docket 18, wherein George S. Pepper is complainant and Alexander R. Shepherd *et al.* are defend-

ants, and by direction of the undersigned, will sell at public
704 auction, to the highest bidder, in front of the premises, on Friday, the 8th day of August, A. D. 1879, at 6 o'clock p. m., the following-described real estate, situate in the city of Washington, District of Columbia, to wit: Part of lot numbered two (2), in square numbered one hundred and sixty-four (164), and bounded and described as follows, viz: Beginning at a point on north K street forty-three feet and nine inches ($43\frac{9}{12}$ feet) east of the southwestern corner of said square and running thence west on K street forty-three feet and nine inches ($43\frac{9}{12}$ feet) to said southwestern corner of said square; thence northwesterly along the line of Connecticut avenue about eighty feet and ten inches ($80\frac{10}{12}$ feet) to the south line of original lot numbered three (3), in said square; thence northeasterly and at right angles with said avenue and along the line of said lot three about eighty-five feet to intersect a line drawn due north from the point of beginning, and thence due south to the point of beginning; together with all the improvements, ways, easements, rights, privileges, and appurtenances to the same belonging or in anywise pertaining.

Terms of sale, as prescribed by said deed of trust, as follows,
viz: The sum of twenty thousand dollars in cash; a further
705 sum of twenty thousand dollars, with interest thereon at the rate of nine per cent. per annum, in twelve months after the day of sale, for which the note of the purchaser, secured by a deed of trust upon the property sold, shall be taken, and the balance at twenty-four and thirty-six months, for which the notes of the purchaser, bearing interest at the same rate of six per centum per annum from the day of sale and secured by a deed of trust on the property sold, shall be taken. A deposit of one thousand dollars shall be required of the purchaser at the time of sale, and all conveyancing shall be at the expense of the purchaser. If the terms of the sale are not complied with within five days from the day of sale, the trustees reserve the right to resell the property at the risk and cost of the defaulting purchaser, after ten days' notice in the Evening Star newspaper.

WILLIAM H. PHILIP,
JAMES M. JOHNSTON,
Trustees.

THOMAS DOWLING, *Auctioneer.*

The above sale is postponed, by order of the court, until the 9th day of September, A. D. 1879, at the same hour and place.

WILLIAM H. PHILIP,
JAMES M. JOHNSTON,
Trustees.

706 The above sale is further postponed by order of court until Thursday, October 2d, 1879, at 4.30 p. m.

WILLIAM H. PHILIP,
JAMES M. JOHNSTON,
Trustees.

3410.

Owing to the unavoidable absence of one of the trustees the above sale is further postponed until Thursday, October 23d, 1879, at 4.30 p. m.

WILLIAM H. PHILIP,
JAMES M. JOHNSTON,
Trustees.

Oct. 2–d&ds.

Filed Dec. 18, 1879. R. J. Meigs, clerk.

(Copy.)

(Stamps.) A. C. Bradley, attorney-at-law.

WASHINGTON, D. C., *March* 14, 1878.

George S. Pepper, Esq.

DEAR SIR: I have received your order of March 6, 1878, calling upon me, as trustee, to advertise and sell Mr. Shepherd's house under a deed of trust. Mr. Philips has showed me the deed of trust, my first acquaintance with it, and communicated your instructions to him.

Upon referring to Mr. Shepherd I am informed that he can
707 pay the interest by July, perhaps earlier, and that the trust does not cover the entire area of the house, cutting off about twenty feet of the rear.

The times are very unpropitious for the sale of any property, especially so valuable a piece as the one covered by the trust, and I think that under all the circumstances that it would not be just to advertise at present.

Yours resp'y,
(Signed) A. C. BRADLEY.

Answer of Geo. S. Pepper. Filed Dec. 3d, 1879. R. J. Meigs, Clerk.

In the Supreme Court of the District of Columbia.

ALEXANDER R. SHEPHERD *vs.* WILLIAM H. PHILIP *et al.* } 7052, Equity.

The answer of George S. Pepper to the bill of complaint of Alexander R. Shepherd against him and others in chancery exhibited.

This defendant, now and at all times hereafter, reserving to himself all benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in said bill contained, nevertheless, for answer thereto or to so much thereof as he is advised it is necessary and material
708 for him to answer, he says as follows:

1. I admit that the defendants Philip and Johnston are residents of the District of Columbia, and that I am a resident of the city of Philadelphia, Pennsylvania.

2. I admit that on the twenty-third day of October, 1879, the said defendants, Philip and Johnston, did, pursuant to the advertisement

referred to in the second paragraph of the bill, a copy of which advertisement is annexed as part of this answer, marked Exhibit P. 1 (the *only* referred to as filed with the bill not being found therewith), not, as alleged, pretending to act, but, in fact, acting as trustees under and by virtue of a certain deed of trust dated June 1, 1874, and recorded among the land records of the District of Columbia in Liber 754, folio 51, and by virtue of a decree in this court passed May 12, 1879, in cause number 6201, equity docket 18, wherein I am complainant and the said complainant herein and others are defendants, as set forth and recited in said notice of sale, & by virtue of other orders passed in said cause, undertook to sell and, in fact,
709 did sell the certain piece or parcel of land known as part of lot numbered two (2), in square numbered one hundred and sixty-four (164), in the city of Washington, as described in said notice of sale, at auction, at which sale the property was knocked down to me for the sum of fifty thousand ($50,000) dollars, subject, however, I aver, to taxes, the amount of which was announced at the sale, as will be hereinafter stated; and I admit that the said trustees have since executed and delivered to me a deed of said land and premises, which is recorded in Liber No. 923, folio 392, of said land records.

3. I deny that the acts of said Johnston and Philips were, as alleged, entirely without authority in the premises in advertising and attempting to convey said land.

I admit complainant's averment that said Johnston was not constituted one of the trustees by said deed of trust, but I aver that this court did confer upon and vest in said Johnston all title, *tracts*, and powers formerly vested in said Bradley under said deed of trust, and did substitute said Johnston for and in the place of said Andrew C. Bradley under said deed of trust, and that this court did, in said
710 cause, remove said Bradley from his office of trustee under said deed of trust, and did divest him of the title, powers, and trusts conferred upon him thereby; and defendant refers to the record in No. 6201, equity docket, of this court, and the orders, proceedings, exhibits, and testimony therein as part of this answer.

4. In answer to paragraph 4 I say, on information and belief, that there was a large attendance of persons at said sale, and among them several who were pecuniarily able to purchase and who were perfect strangers to me and in no way acting in my interest. I am informed that the first bid was made by my attorney, John F. Hanna; that the trustees, Philip and Johnston, made a reserved bid of $45,000.00, and that my said attorney then bid $50,000.00.

It is perfectly true that the trustees announced at said sale that the property was sold subject to taxes. This was necessary, because the deed of trust did not provide for the payment of taxes from the proceeds of sale. In order to remove all doubt on this score the trustees announced the exact amount of taxes due and exhibited the certificate of the tax collector showing this sum.

I am advised that sales of real estate are universally made in this way when the deed of trust fails to provide for the payment of taxes.

711 In order that the sale might not prove abortive because of a misunderstanding on the part of the bidders as to the property described in the deed of trust, said trustees publicly made known the quality of property to be sold. Defendant believes that the omission to do this would certainly have been objected to by Mr. Shepherd or by purchasers at the sale on the ground of uncertainty as to the property sold.

5. I deny that I did not comply in any particular with the terms of sale as prescribed by the deed of trust and notice of sale. On the contrary, I say that I did comply with the terms of sale as recited in the deed to me from the trustees. I am advised that, both by law and by common custom, the mode adopted by me is the full compliance with the terms of sale where the party secured is compelled to purchase the property; and I further state that I have paid the taxes on said property and all of the expenses of the said sale, and have properly credited on Mr. Shepherd's note the net proceeds of sale.

6. It is not true that the said sale was managed solely in my interest by said trustees. I am informed by them that they refused to let the property be sold for a smaller sum than $45,000.00,
712 and for that reason made the bid of that amount. I know that they gave me no advantage not strictly my due under the deed of trust, and that they took no advantage of Mr. Shepherd, directly or indirectly. I deny that the price received was grossly inadequate. On the contrary, I say that, considering the condition in which the fraud of Mr. Shepherd or his agents in purposely omitting the rear lot from the deed of trust has placed the property, I gave more for it than any other person except the party secured would give. I would have been unwilling to give so much except that said Shepherd is, as I am informed and believe and therefore charge, hopelessly insolvent, and there is no other source from which I can collect the balance of money due to me, which amounts now to about $12,000.00 or more, after crediting said Shepherd with the net proceeds of sale, and notwithstanding that I also assumed with my purchase and paid taxes to the amount of $2,731.31. I have also paid all of the expenses of said sale, amounting to $1,616.41.

7. Defendant denies that complainant is the owner of any valuable interest, either legal or equitable, in said property. Not only was it subject to an encumbrance of $45,000 interest in cash in favor of this defendant, but said Shepherd induced one Mercy
713 Maria Cartter Gray to loan him $35,000.00 on the security of this property, no portion of which, principal or interest, as this defendant believes and avers, has been paid. Defendant believes (and he is informed that Mrs. Gray is of the same belief) that the said property is absolutely worthless as security for the loan to her, much less is there any valuable interest over and above that claimed in said Shepherd. Moreover, so far as sub-lot A is concerned, said Shepherd has several times sworn in cause No. 6201, equity, that he has not and never has had any title thereto, and if that be so neither he nor the trustees to secure Mrs. Gray's debt have any title or claim whatsoever to said property, & this — prayed that said proceedings be read — of the answer.

Further answering this paragraph, defendant says that said Shepherd has made a conveyance of all his real estate, including the house involved in this controversy, to Messrs. Peter F. Bacon, David F. Bartlett, and Samuel Cross, as trustees, as will appear by deeds recorded in Liber 839, folio 226, Liber 832, folio 225, & Liber 913, f. 346, of the land records of the District of Columbia, for the benefit of his creditors; that the property conveyed to said trustees is wholly insufficient to pay his creditors, and that said Shepherd is, as
714 this defendant is informed and believes and therefore avers, irretrievably insolvent.

Defendant has been advised that the right of action, if any exists, is in said trustees, but he is informed that they will not lend themselves to the scheme of Mr. Shepherd by which he attempts to delay this defendant in the recovery of his debt admitted on all hands to be due. The fact is that said Shepherd is, as he has openly boasted, using the machinery and process of this court to keep the property in litigation for an indefinite period, during which time he is appropriating the rents to his own use.

Further answering, defendant says that this is the fourth proceeding instituted or instigated by said Shepherd for the purpose of delaying this defendant in the collection of his debt.

The principal of said debt not being paid and the interest being very largely in arrears, and said Shepherd having utterly failed to pay the taxes on the property and the insurance premiums, defendant was compelled to proceed to collect his debt under the terms of the deed of trust recorded in Liber 754, folio 51. Defendant having called upon said Bradley and Philip, trustees, to sell the
715 said property under said deed of trust to discharge said debt, he was surprised to be answered by a letter from said Bradley (a copy of which is hereto annexed and marked Exhibit G. S. P. No. 2, and which is prayed may be read and considered as part of this answer), in which said Bradley refused to act as trustee and to sell said property as he was called upon to do.

This defendant was then compelled to file a bill to substitute a trustee instead of said Bradley, and said Shepherd set up as a defence thereto a fictitious and unfounded defense of usury; and, as a further defence, stated that the deed of trust aforesaid did not include all of the ground upon which stood the dwelling-house and improvements mentioned in said deed of trust, and *complainant* refers to and makes part hereof the proceedings in equity cause No. 6201 to show these facts.

After said Shepherd had succeeded for a long time in preventing this defendant from obtaining his rights under said deed of trust, notwithstanding an entire absence of any meritorious defense, the defendant, James M. Johnston, was at last substituted as trustee in the place of said Bradley under said deed of trust in Liber 754, folio 51. After said decree had been signed said Shepherd noted
716 an appeal to the court in banc, but shortly before said cause was reached for hearing said appeal was dismissed. After this decree was signed said Shepherd procured a further postponement of the sale of said property by obtaining an *ex parte* order on

a petition filed by him in said cause of Pepper *vs.* Shepherd, No. 6201, equity, though totally unfounded in law. This petition was successful in accomplishing a further postponement of the sale of said property from the 8th day of August, 1879, to the 9th day of September, 1879. Having himself no longer any power to procure a further postponement of the sale, said Shepherd, as this defendant is informed and believes and charges, procured one Mercy M. C. Gray to file a bill of complaint for the purpose of again interfering with the sale. This had the effect of again unjustly postponing the said sale until the 2d day of October, 1879, as will be seen by reference to said cause No. 6951, equity, which it is prayed may be read and considered a part of this answer. This bill accomplished this delay, though the court decreed that the sale should be proceeded with, and the sale was proceeded with on October 23rd, 1879, and

717 in this connection defendant pleads that the orders in said cause (Pepper *vs.* Shepherd) No. 6201, equity, and the said decree is a final adjudication of this cause (No. 7052, equity), so far as the latter undertakes to impeach or deny the power of said trustees, Johnston and Philip, to sell said property, and as to all facts and matters happening prior to the 23d day of October, 1879.

And now for the fourth time said Shepherd undertakes without cause to further injure this defendant by attempting to keep defendant out of the possession of said property, though this defendant is the lawful owner thereof.

And, having fully answered, defendant prays to be hence dismissed with his reasonable cost.

GEO. S. PEPPER.

George S. Pepper, being by me first duly sworn, deposes and says that he has read the foregoing answer by him subscribed and knows the contents thereof; that the matters and things therein stated of his own knowledge are true, and that the matters & things therein stated on information & belief *I* believe- to be true.

GEO. S. PEPPER.

Sworn and subscribed before me this third day of December, 1879.

HOLSTEN DE HAVEN,
Notary Public.

NATH'L WILSON, *Of Counsel.*
JOHN F. HANNA. *Sol. fo- Def't.*

718 Leave to file cross-bill allowed Dec. 20th, 1879.

MACARTHUR, *Justice.*

Cross-Bill. Filed Dec. 20, 1879. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
ALEXANDER R. SHEPHERD, WILLIAM H. PHILIP, and JAMES M. JOHNSTON. } In Equity. No. 7052.

To the honorable the judges of the supreme court of the District of Columbia:

The cross-bill of complaint of George S. Pepper against Alexander R. Shepherd, William H. Philip, and James M. Johnston, defendants, leave of the court to file the same first having been obtained—

Complainant respectfully shows to the court that heretofore, to wit, on the 14 day of November, 1879, the defendant, Alexander R. Shepherd, filed in the court an original bill of complaint, in which he alleged, among other things, that on October 23, 1879, the defendants, Philips and Johnston, as trustees, had sold certain real estate, to wit, part of lot 2, in square 164, described in a deed
719 of trust duly recorded in Liber 754, folio 51, of the land records of the District of Columbia; that said sale was made by said trustees, who pretended to act by virtue of the powers contained in said deed of trust and by virtue of a decree of the court passed in equity cause No. 6201; that said property was knocked down to the complainant for $50,000.00, and that it has since been conveyed to him.

2. Said Shepherd further alleged in said bill that said sale by said trustees was without authority, as said Johnston had no power to sell, either under said deed of trust or under said decree of court, and that Mr. Andrew C. Bradley was never lawfully ousted from his position as trustee under said deed of trust.

3. In said bill it is further alleged that there were no bidders present other than those acting in the interest of said Pepper.

4. In said bill it is further alleged that this complainant did not comply with the terms of sale otherwise than by crediting on his claims secured by said deed of trust the net proceeds of sale.

5. In said bill it is further alleged that said sale was managed solely in the complainant's interest; that the property was sold for a grossly inadequate price; that said Shepherd was the owner
720 of a valuable equitable interest in said property, & that said sale was, by reason of the matters alleged in said bill, null and void.

Said Shepherd thereupon prayed for an injunction to restrain any interference with said Shepherd's possession of said property; that said sale should be set aside and the trustees deed to this complainant canceled and for general relief.

Subsequently on the — day of December, 1879, an answer was filed by the complainant in which, among other things, he admits that on the 23 of October, 1879, the defendants, Philip and John-

ston, as trustees, at public auction, sold to him for $50,000.00, subject to taxes, however, part of lot 2, square 164, which property has been since conveyed to him by said trustees, the deed being recorded in Liber 923, folio 392. He also admits that said Johnston was not constituted trustee by the deed of trust recorded in Liber 754, folio 51, but insists that said Johnston was substituted by this court in place of Andrew C. Bradley, Esq., by decree passed May 12, 1879, in equity cause 6201. And in said answer, among other things, this complainant denies the want of authority in said trustees, Philip and Johnston, to sell and convey the premises, and that there were no bidders present other than those acting in the interest
721 of said Pepper, and that the terms of sale were not complied with. He also denies that the price was inadequate and that said Shepherd has any valuable interest in said property.

Subsequently, also, on the — day of December, 1879, an answer was filed by Philip and Johnston, trustees, in which, among other things, they admit the sale before a large attendance of persons, on the 23 of October, 1879, to George S. Pepper for $50,000.00 and overdue taxes of premises described in deed of trust recorded in Liber 754, folio 51, and that a deed of said premises was delivered to said Pepper, recorded in Liber 923, folio 392. They insist that they were vested with complete authority to make the said sale—said Philip by virtue of the deed aforesaid, said Johnston by virtue of decrees passed in equity cause No. 6201, May 12, 1879, and July 26, 1879. They also insist that the credit on the debt was properly made. They deny the inadequacy of price; that said Shepherd has any interest in said premises, and that said sale was managed solely in Pepper's interest, all of which proceedings will more fully appear by reference to the said bill and answers in equity cause 7052.

Complainant confidently believes that said Shepherd can get nothing by his said bill, and that it will be dismissed at the
722 final hearing, but complainant avers and charges that a dismissal of said bill will not do complete justice between the parties and will leave a cloud on complainant's title.

Wherefore complainant prays—

1. That the sale referred to in the proceedings in this cause made by Messrs. Philip and Johnston, trustees, on October 23, 1879, of the real estate mentioned in the deed recorded in Liber 754, folio 51, may be decreed to be a legal and valid sale, and the conveyance by said trustees to this complainant recorded in Liber 923, folio 932, be decreed to be valid and effectual to convey to this complainant an unincumbered fee-simple title to the real estate therein mentioned.

2. That complainant may have a writ of assistance or other proper writ or order, by means of which he may be by this court placed in the actual possession and control of said premises.

3. That pending this proceeding a receiver may be appointed to collect the accruing rents.

4. That said Shepherd and all claiming under him, his and their agents, attorneys, and servants, may be perpetually enjoined and

restrained from interfering in any way with the complainant
723 in reconveying and keeping possession of the premises mentioned in these proceedings or in collecting rents therefrom or from doing any act which complainant might lawfully do as the owner of said premises.

5. That complainant may have such other & further relief as the nature of the case shall require.

6. That the United States writ of subpœna may issue to the sevseveral defendants commanding them to appear and answer the exigencies of this bill.

GEOR. S. PEPPER.

George S. Pepper, being duly sworn, deposes and says that he is the complainant in the above cause; that he has read the foregoing bill of complaint by him *by him* subscribed and knows the contents thereof; that the matters and things stated in said bill of his own knowledge are true, and those matters stated on information & belief he believes to be true.

GEO. S. PEPPER.

Subscribed and sworn to before me this 12th day of December, A. D. 1879.

J. T. CALDWELL,
Notary Public.

724 *Summons to Answer Cross-Bill.*

In the Supreme Court of the District of Columbia, Dec. 20, 1879.

ALEXANDER R. SHEPHERD, Complainant,
against
WM. H. PHILIP, Defendant. } No. 7052, Equity Docket.

The President of the United States to Alexander R. Shepherd, defendant:

You are hereby commanded to appear in this court at its first special term occurring twenty days after services of this subpœna and answer the exigency of the cross-bill this day filed and entitled as above, under pain of attachment and such other process of contempt as the court shall award.

Witness D. K. Cartter, chief justice.

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, *Asst. Clerk.*

MEMORANDUM.—That the defendant herewith served is to enter his appearance in this suit, in the clerk's office, on or before the day at which this writ is returnable, otherwise the bill may be taken for confessed.

Marshal's Return.

Summond deft., Alex. R. Shepherd, April 30th, 1880.

F. DOUGLASS, *Marshal.*

725 *Replication. Filed Jan.* 15, 1880. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

ALEXANDER R. SHEPHERD
vs.
WILLIAM H. PHILIP, JAMES M. JOHNSTON, and GEORGE S. PEPPER. } Eq., No. 7052.

The plaintiff hereby joines issue on the answer of the defendants, William H. Philip, James M. Johnston, and George S. Pepper.

ENOCH TOTTEN,
Atty. for Plaintiff.

Pro Confess' vs. A. R. Shepherd to Cross-Bill. Filed Mar. 9, 1880. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

SHEPHERD
vs.
PEPPER *et al.* } 7052. Equity.

It appearing to the satisfaction of the court that the complainant has by his counsel, on the 23d day of January, 1880, appeared to the cross-bill theretofore filed, and having failed to file his answer thereto, it is thereupon this 3d day of March, A. D. 1880, ordered that the said cross-bill be, and the same is hereby, taken *pro confesso* against the complainant, Alexander R. Shepherd.

A. B. HAGNER,
Asso. Justice.

726 *Pro Confesso vs. Shepherd Vacated. Filed March* 8, 1880. *R. J. Meigs, Clerk.*

Sup. Court D. C.

SHEPHERD, ALEX. R.,
vs.
PEPPER, GEO. S. }

On motion of Enoch Totten, for pl't'f, ordered this 8th day of March, 1880, that the *the* decree *pro confesso* for want of answer to the cross-bill be, and the same is hereby, set aside and leave is granted to said plaintiff to file his answer to said cross-bill.

We consent.

A. B. HAGNER,
Asso. Justice.

N. WILSON & J. F. HANNA,
For Defendants.

Answer of Shepherd to Cross-Bill. Filed March 8, 1880. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
ALEXANDER R. SHEPHERD, WILLIAM H. PHILIP, and JAMES M. JOHNSTON. } Equity. No. 7052

The answer of Alexander R. Shepherd, one of the defendants, to the cross-bill of George S. Pepper.

727 For answer unto said cross-bill, I admit that I filed the original bill in this cause, and that the complainant in this cross-bill and the defendants, William H. Philip and James M. Johnston, have filed answer thereto, as fully appears by the records and proceedings in this cause. I deny that complete justice cannot be done between the parties upon the original bill, and I deny that the complainant is entitled to any affirmative relief upon said cross-bill.

And having fully answered, &c.

ALEX. R. SHEPHERD.

DISTRICT OF COLUMBIA, *ss:*

Alexander R. Shepherd, being duly sworn, says that the statements contained in the foregoing answer (which answer he has read) made of his own knowledge are true, and that those statements made upon information received from others he believes to be true.

ALEX. R. SHEPHERD.

Subscribed and sworn to before me this fifth day of March, A. D. 1880.

J. M. YOUNG,
Notary Public.

728 *Answer of Philip & Johnston, Trustees, to Cross-Bill. Filed Mar.* 12, 1880. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

GEORGE S. PEPPER
vs.
ALEXANDER R. SHEPHERD *et al.* } No. 7052, Equity.

The answer of William H. Philip & James M. Johnston, trustees, to the cross-bill of George S. Pepper filed in this cause.

To so much of said bill of complaint as these defendants are advised it is necessary & material for them to answer, they say as follows:

They admit the averments of said bill of complaint to be true, &, as trustees having no personal interest in this cause, submit to such decree as may be proper in the premises.

WILLIAM H. PHILIP.
JAMES M. JOHNSTON.

William H. Philip & James M. Johnston, being duly sworn, depose & say that they have read the aforegoing answer by them subscribed and know the contents thereof; that the matter & things stated in said answer of their own knowledge are true, & those facts stated in reference to & on belief they believe to be true.

JAMES M. JOHNSTON.
WILLIAM H. PHILIP.

729 Subscribed and sworn to before me this 10th day of March, A. D. 1880.

HARTWELL P. HEATH,
Notary Public.

Replication. Filed Mar. 12, 1880. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

ALEXANDER R. SHEPHERD *vs.* WILLIAM H. PHILIP *et al.* } 7052, Eq.

The defendant, George S. Pepper, hereby joins issue upon the answer to the cross-bill filed in this cause.

NATHANIEL WILSON,
JOHN F. HANNA,
Solicitors for G. S. Pepper.

Answer of Compl't to Petition. Filed Mar. 18, 1880. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

ALEXANDER R. SHEPHERD *vs.* WILLIAM H. PHILIP *et al.* } No. 7052, Equity.

The complainant in this cause, in response to the two petitions, the one of George S. Pepper and the other the joint petition of William H. Philip and James M. Johnston, trustees, respectfully shows as follows:

730 First. That it is deemed unnecessary and unimportant to notice many of the averments contained in the two petitions, except to aver that, in so far as they pretend to state the pleadings and proceedings in equity cause No. 6201, the said averments are inaccurate and erroneous, as will fully appear upon inspection of said record and proceedings, if necessary.

Second. The respondent avers, upon information and belief, that at the time when the said decree was made by Justice James in this cause dismissing the bill the court announced the reasons which led to said decree, and that the court stated the reasons to be that the decree in the former equity cause (being cause No. 6201) which pretended to substitute James M. Johnston, trustee, in lieu of Andrew C. Badley, in a deed of trust which was not designated or identified (there being two deeds of trust which answered the description in the decree), was null and void upon its face to such an extent that any proceedings had under it were plainly void, and that a deed made in pursuance of any sale which said trustees might have undertaken to make under such decree did not create a cloud upon
731 the title of the complainant, and that for that reason the equity court had no jurisdiction to interpose in the matter.

That the counsel for defendants, and they alone, were present at the time when the court announced the reasons for passing the decree in this cause, and the said decree was prepared by them and submitted to said justice for signature in the criminal court room on the day of its date.

Third. The respondent further says, upon information and belief, that the said decree in this cause is in the handwriting of Mr. John F. Hanna, one of defendant Pepper's solicitors, and that the endorsement thereon is in the handwriting of Mr. Nathaniel Wilson, another of said defendant's solicitors, and that said decree was on the day of its date presented by said Wilson to the solicitors of the respondent, Enoch Totten, Esq., in his office, and that said Totten, not having been informed by said Wilson of the reasons assigned by said justice for dismissing said bill, and being then ignorant of the said reasons, said that he desired to take an appeal to the general term from such decree, and thereupon, with his own hand, he wrote the necessary words upon such decree taking an appeal in the body of the decree, which now appears of record in this court. And this respond-
732 ent says, upon information and belief, that the said decree was prepared by the said solicitors for defendant Pepper with full knowledge of the reasons assigned therefor by the justice, and that the opinion filed thereafter in the cause by said justice stated nothing that was new to them, although only then just revealed for the first time to respondent's solicitor.

Fourth. The respondent further shows that the said pretended appeal taken in behalf of the defendants was entered on the order book twenty-one days after the filing of the opinion of the court, at special term, assigning reasons for said decree, although the day after the said opinion was filed it was fully and prominently advertised in the National Republican, and was thereafter matter of public notoriety; that the said pretended appeal was signed by said Hanna and Wilson as solicitors for defendants without designating which defendants were represented by them; and respondent further says that it appears from the records of this court that on the —— day of September, 1880, the said Hanna and Wilson, by an order passed that day in special term, withdrew from the cause as

solicitors for James M. Johnston and William H. Philip,
733 trustees, and, further, that it does not appear from the records of this cause or of this court that any appeal was taken for or on behalf of said trustees unless the appeal entered in the order book, signed by the said Hanna and Wilson, dated on the fourteenth day of January, 1881, operated as such an attempt; and he further shows that due notice of the motion to dismiss the defendant's appeal was given to Mr. Nathaniel Wilson, one of the solicitors who signed the order of appeal, and that, therefore, all the parties who were represented in said appeal order were given full and sufficient notice of said motion, and he further shows that, although the said petitioners complain to have been so grievously afflicted by the dismissal of said appeal, they took no step to remedy it until two weeks after such dismissal.

ALEXANDER R. SHEPHERD,
By A. C. BRADLEY, *Attorney-in-Fact.*

DISTRICT OF COLUMBIA, *ss:*

Andrew C. Bradley, being duly sworn, says that he is an agent and attorney for said Shepherd, who is now residing in the Republic of Mexico, and that he has read the foregoing answer in behalf of the said Shepherd and knows the contents thereof, and that
734 the mattters and things therein stated upon motion [information] and belief he believes to be true, and those stated positively of his own knowledge he knows to be true.

A. C. BRADLEY.

Subscribed and sworn to before me this 7th day of March, 1881.

W. P. BELL,
Notary Public.

DISTRICT OF COLUMBIA,
County of Washington, } *ss:*

Enoch Totten, being first duly sworn, doth depose and on his oath say that he is the attorney of record and solicitor for the complainant, Alexander R. Shepherd, and has been from the outset to the present time; that he was advised by Nathaniel Wilson, Esq., attorney for the defendant Pepper, that the court at special term had, upon consideration, concluded to pass a decree in the said cause, and that such decree was presented to him in his office for inspection by the said Wilson, who did not advise him of the reasons assigned by the justice for passing the same, and that he there-
735 upon added, in his own handwriting, to the body of the said degree the words appearing there asking an appeal therefrom to the general term, and that all of this occurred on the day when the said decree was passed and entered.

Deponent further says that he is informed and believes that at the time the court announced its conclusions in the said cause and determined to dismiss the bill of the complainant the court announced that the reason therefor was that the decree of the court in equity cause No. 6201 was void upon its face, and that any proceedings

had in pursuance thereof were void, and that for that reason not even a cloud was created upon the title of the complainant by such proceedings, and that the deed made and put upon record as charged in the bill of complaint did not injure the complainant, and hence a court of chancery had no jurisdiction in the premises.

ENOCH TOTTEN.

Subscribed and sworn to before me this 7 day of March, A. D. 1881.

W. P. BELL,
Notary Public.

736 *Motion for Injunction on Cross-Bill. Filed Apr.* 30, 1880. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

A. R. SHEPHERD *vs.* G. S. PEPPER *et al.* } Cross-bill 7052.

Now comes the complainant in the cross-bill, Geo. S. Pepper, by his solicitors, and moves the court for an injunction and the appointment of a receiver as prayed in the cross-bill.

JOHN F. HANNA,
NATH'L WILSON,
Sol's for Pepper.

Referred to Justice Hagner. Filed July 10, 1880. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

SHEPHERD *vs.* PHILIP *et al.* } No. 7052, Equity.

This cause having been reached on the calendar of causes regularly assigned for hearing for this day, it is this 10th day of July, 1880, ordered that, as the judge now holding this court was lately of counsel in respect to the subject-matter enhanced [embraced] in this cause, the same be, and it is hereby, referred to Justice Hagner for hearing.

W. S. COX, *Justice.*

737 *Cause Referred to Justice James. Filed Sept.* 8, 1880. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

SHEPHERD *vs.* PHILIP *et al.* } No. 7052, Equity.

Upon motion of John F. Hanna and Nathaniel Wilson, it is this

8th days of September, A. D. 1880, ordered that they be, and they hereby are, allowed to withdraw as counsel for the trustees, Philip and Johnston, in this cause, and that the cause be assigned for hearing to Justice James.

W. S. COX, *Justice.*

Dismissal of Bill and Appeal. Filed Oct. 30, 1880. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

ALEXANDER R. SHEPHERD.
vs.
GEORGE S. PEPPER *et al.* } No. 7052.

This cause coming on to be heard upon bill, cross-bill, answer, replications, and testimony, and having been argued by counsel on both sides and fully considered by the court, the said cause having been referred for hearing to Justice James by the judge holding the special term on equity, it is thereupon, this 30th day of October, A. D. 1880, ordered, adjudged, and decreed that the said bill be, and the same hereby is, dismissed at the complainant's costs. From
738 this decree the said complainant appeal to the general term.

CHAS. P. JAMES, *Justice.*

Appeal Dismissed by Compl't. Filed Feb. 11, 1881. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia. In General Term, February, 1881.

ALEXANDER R. SHEPHERD
vs.
GEORGE S. PEPPER *et al.* } Eq. No. 7052.

And now comes the said complainant, Alexander R. Shepherd, and moves the court to dismiss his appeal now pending in this court and taken from the decree of the special term herein, passed on the 30th day of October, 1880.

ENOCH TOTTEN,
Att'y for Complainant and Appellant.

739 Filed Feb. 9, 1881. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia. In General Term, February, 1881.

ALEXAND'R R. SHEPHERD
v.
GEORGE S. PEPPER *et al.* } Equity No. 7052.

And now comes the said complainant, by his counsel, and moves the court to dismiss the appeal entered in the order book on the 14th day of January, 1881, by the defendants from the decree of

the special term herein, passed on the 30th day of October, 1880, and for reasons the following is assigned, to wit:

That the decree of the special term dismissing the bill and the cross-bill was passed and entered of record on the 30th day of October, 1880, and that the said appeal was entered on the 14th day of January by the rules of this court.

ENOCH TOTTEN,
Counsel for Compl't.

To Nathaniel Wilson, Esq., counsel for the defendants in the above-entitled cause:

Please take notice that on Friday, the 11th day of February, 1881, at the opening of court on that day, or as soon thereafter as
740 counsel can be heard, I shall move the court to dismiss the appeal taken in behalf of the defendants in the above-entitled cause.

ENOCH TOTTEN,
Counsel for Compl't.

February 8th, '81.

Petition of Trustees to Reinstate Appeal. Filed Feb. 25, 1881. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

ALEXAND'R R. SHEPHERD
vs.
WILLIAM H. PHILIP *et al.* } 7052, Equity.

The petition of William H. Philip and James M. Johnston, trustees, respectfully represents as follows:

1. That Mr. Andrew C. Bradley, one of the trustees originally named in a deed of trust executes by A. R. Shepherd, the complainant, dated June 1st, 1874, and recorded in Liber 754, folio 51, of the land records for the District of Columbia, having declined to act thereunder, a bill was filed in this court, being cause No. 6201, by George S. Pepper, the person secured by said deed of trust, and the said bill resulted in a decree whereby the petitioner,
741 James M. Johnston, was substituted in the place and stead of said Bradley.

That in the said decree, which was dictated by the court, the designation of the liber and folio of the land records was not inserted, whereby the more particularly to indicate the deed of trust under which the said Johnston had been substituted for the said Bradley; that the pleadings and only issue, however, in the said cause referred to said deed of trust, the original of which was filed as an exhibit to the said bill and in connection with the deed of trust of later date, recorded in Liber 777, folio 489, and given by the said Shepherd to W. F. Mattingly and Andrew C. Bradley to secure the said Pepper in a further loan of ten thousand dollars ($10,000) on the same real estate, as described in this cause.

But under the latter trust these had been——

2. That a petition which was filed by the complainant in this cause to stay the sale of his property under the first-named trust, because of the alleged uncertainty in the said decree substituting the said Johnston in place and stead of said Bradley, was refused by the court; that the sale thereafter took place under said
742 deed of trust and decree and by virtue of other orders of the court identifying the said trust deed. After the sale the complainant dismissed his appeal from the said decree substituting Johnston in the place and stead of Bradley and thereupon filed the bill in this cause, alleging that said Johnston had not the power of sale and that the sale made by said Philip and Johnston, as aforesaid, should be set aside, both for that reason and because of several matters *in pais*, which are detailed in the pleadings and evidence in this cause.

3. That the cause came on for final hearing before the justice holding a special term in equity, and the bill of complaint was, after full argument by counsel, dismissed generally and without qualification, said decree of dismissal bearing date October 13th, 1880; that from this decree complainant at once appealed.

4. Subsequently, at the instance of complainant, an opinion was filed by the said justice who had rendered the said decree of dismissal, in which opinion it is stated in effect that the said sale made by said Philip and Johnston was void because of the uncertainty in the decree substituting Johnston for Bradley in said deed of trust under which the sale was made.

743 5. On motion of complainant's counsel his appeal in this cause has been dismissed since the filing of said opinion.

6. Petitioners respectfully state that by reason of the said opinion they are left in doubt as to what is their proper course to pursue as trustees; that if said sale made by them as aforesaid was without proper authority, as mentioned in said opinion, it is an error in the said decree substituting Johnston in the place of Bradley, and for which the trustees are and should not be responsible, and that having a duty to render to the beneficiary under this said deed of trust, as well as to the grantor thereunder, and desiring only to discharge their duties as trustees as they have ever striven to do in the premises, they submit themselves to the court for such instructions as it may deem right to give.

7. Petitioners further state that, by a misapprehension of their counsel as to the time for hearing of complainant's motion to dismiss defendants' appeal from the decree dismissing the bill (which was at once entered upon the discovery of the filing of the afore-
744 said opinion), they were not represented in court on said motion, and that they had no notice of the said motion. They therefore pray that the court may reinstate the said appeal and hear this cause upon its merits or grant to the petitioners the relief proper in the premises.

WM. H. PHILIP,
By JAMES M. JOHNSTON,
JAMES M. JOHNSTON,
Trustees.

Petition of Geo. S. Pepper to Reinstate Appeal. Filed Feb. 25, 1881.
R. J. Meigs, Clerk.

In the Supreme Court of the District of Columbia.

ALEXANDER R. SHEPHERD
vs.
WILLIAM H. PHILIP *et al.* } In Equity. No. 7052.

The petition of George S. Pepper respectfully represents as follows:

1. That he loaned to the complainant the sum of $45,000—$35,000 in June, 1875, & $10,000 in March, 1875—which was secured by deed of trust on complainant's house, corner of Connecticut Ave. and K street N. W., Washington, District of Columbia, and described in these proceedings. Neither interest nor taxes nor
745 insurance premiums have been paid by said complainant since 1876, though in the deeds of trust by which said debt is secured the said complainant contracts to pay this interest semi-annually and taxes and insurance premiums as they respectively became due.

2. Mr. Andrew C. Bradley, one of the trustees, although requested by petitioner, having refused to execute the first deed of trust for $35,000, recorded in Liber 754, folio 51, of the land records for the District of Columbia, a bill was filed on April 11th, 1878, which resulted, after much delay on account of complainant's untenable defences, in the appointment of James M. Johnston as trustee in the place of said Bradley under said deed.

3. Thereupon said Philip, as one of the trustees named in the said original deed, recorded in Liber 754, folio 51, and James M. Johnston, substituted in the place of said Bradley as trustee thereunder, after several efforts made by complainant to delay the sale, made sale of the real estate referred to, and the petitioner, George S. Pepper, became the purchaser thereof.

746 4. Subsequently the bill in this cause was filed alleging that — said Johnston as aforesaid should be set aside, both because of said Johnston's want of power and because of several matters *in pais*, which are detailed in the pleadings and evidence in this cause.

5. This cause came on for final hearing before the justice holding a special term in equity, and the bill of complainant was, after full argument by counsel and consideration by the court, dismissed generally and without qualification. Said decree of dismissal bears date on October 13th (30), 1880. From this decree complainant at once appealed.

6. Subsequently, on December 24th, 1880, the complainant obtained and filed with the papers in this cause, and without notice to either of the defendants or their counsel, an opinion from the justice who signed the said decree of October 13th (30), 1880, in which opinion it is found, in effect, that the said sale made by said Philip

and Johnston was void because of the uncertainty in the decree substituting Johnston for Bradley as trustee, and that inasmuch as the want of power to make said sale thereby occasioned appeared in the face of the instruments.

747 The title claimed by petitioner was not a cloud on the title of complainant, and that for that reason the court of equity had no injunction to hear and determine the merits in cause No. 7052, equity.

7. Immediately upon discovering, by accident, that such opinion had been filed, and regarding said opinion as a departure from and variation of the decree already rendered, the petitioner notes an appeal to the court in banc.

8. A motion was made by complainant's counsel to dismiss said appeal, and notice thereof was served on defendants' counsel; but, because of a misunderstanding on his part as to the time of the hearing of said motion, the motion to dismiss said appeal was granted without argument and in his absence. No notice of any kind was served on either of the said trustees, nor did any of the said trustees know that any motion was to be heard on February 11th, 1881, although one of them had argued the cause at length on behalf of the trustees in the special term.

9. And petitioner is advised that he ought not to be prejudiced by the fact of the filing of said opinion after the time men-
748 tioned in the rules of the court for taking appeals had passed nor suffer by reason of the act of the court in that regard. He says that in addition to said decree dismissing the complainant's bill generally there is now an opinion finding as a fact that the said trustees had no power to make the sale, which finding did not appear in the decree, nor was it to be decreed therefrom; on the contrary, said decree was inconsistent with any such finding, and petitioners say that if any such finding had been inserted in the decree, or if the decree had been anything else than an unconditional dismissal of the bill, he would certainly have appealed therefrom at once.

10. Petitioner further says that it would create a most serious complication of his rights if his appeal is dismissed without giving him an opportunity to settle the whole case by a proper decree of this court, and thus put an end to this litigation (which complainant openly asserts is carried on for delay only), and enable the petitioner to collect a debt to which complainant does not even pretend to have any defense, and to benefit by the sale of the security pledged therefor, without which payment is impossible, as complainant
749 is insolvent. Inasmuch as the act of the court in filing its opinion, of which petitioner was not advised by complainant's counsel and of which he had not any knowledge whatever until on or about — fourteenth day of January, 1881, and long after it had been filed, substantially varied the said decree and his right in the premises, he respectfully prays that the appeal may be reinstated and the cause heard on its merits, or that he may have such other and further relief as the court shall think proper in the premises.

GEO. S. PEPPER,
By his att'y, NATH'L WILSON.

Striking Opinion of Justice James from Files. Filed June 17, 1881. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

SHEPHERD *vs.* PEPPER *et al.* } 7052, Equity.

This motion of the defendants to reinstate the appeal in this cause coming on to be heard in this court in general term and having been considered by the court, it is, this 17th day of June, A. D. 1881, ordered that the paper filed herein on the 24th day of December, A. D. 1880, as the opinion of Mr. Justice James, of this court, be, and the same hereby is, stricken from the files of the court.

By the court: A. WYLIE.

750 In the Supreme Court of the District of Columbia.

ALEX. R. SHEPHERD *vs.* WM. H. PHILIP *et al.* } Equity No. 77052.

DISTRICT OF COLUMBIA, *County of Washington,* } *ss:*

Be it remembered that at an examination of witnesses begun and held on the 24th day of March, 1880, and continued from time to time until the 24th day of April, 1880, when the within depositions were taken, I, Edmund A. Bailey, an examiner in chancery, did cause to be personally present before me, in the city of Washington, D. C., the within-named witness to testify in behalf of the complainant in the above-entitled cause.

EDMUND A. BAILEY,
Examiner in Chancery.

751 In the Supreme Court of the District of Columbia.

ALEXANDER R. SHEPHERD *v.* GEORGE S. PEPPER *et al.* } Equity No. 7052.

WASHINGTON CITY, *March* 18, 1880.

GENTLEMEN: Please take notice that on Wednesday, the 24th day of March, 1880, at the hour of two o'clock p. m., and at the office of Enoch Totten, Esq., 416 5th St. N. W., city, I shall proceed to take such evidence as may be adduced before me by the complainant in this cause.

Your attendance is requested.

Very respectfully, EDMUND A. BAILEY,
Examiner.

To Mess. Nathaniel Wilson and James M. Johnston.

Service acknowledged this 18th day of March, 1880.
NATH'L WILSON, *Of Counsel.*

752 WASHINGTON, D. C., WEDNESDAY, *March* 24, 1880.

Met pursuant to notice hereto attached.

Present: Enoch Totten, Esq., counsel for complainant; John F. Hanna, Esq., counsel for defendants.

No witnesses appearing, adjourned to Friday, March 26th, 1880, at two o'clock p. m.

EDMUND A. BAILEY, *Examiner.*

WASHINGTON, D. C., FRIDAY, *March 26th*, 1880.

Met pursuant to adjournment.

Present: John F. Hanna, Esq., for defendants.

Adjourned to Wednesday, March 31, 1880, at 2 o'clock p. m.

EDMUND A. BAILEY, *Examiner.*

WASHINGTON, D. C., WEDNESDAY, *March 31st*, 1880.

Met pursuant to adjournment.

Present: Enoch Totten, Esq., counsel for complainant; Messrs. Nathaniel Wilson and John F. Hanna, counsel for the defendants; Andrew C. Bradley, Esq., and James M. Johnston, Esq., *in propria persona*, as trustee.

753 WILLIAM F. MATTINGLY, a witness of lawful age, produced and sworn on behalf of complainant.

By Mr. TOTTEN:

Q. What is your business?

A. Lawyer.

Q. Do you know the parties to this case, Shepherd and Pepper, and Philip and Johnston, &c.?

A. I do.

Q. Do you know anything about the valuation of real estate in this city?

A. Somewhat; I do.

Q. Do you know the premises in controversy here, Mr. Shepherd's residence, corner of K St. and Connecticut Ave.?

A. Very well.

Q. How much is that property worth?

(Question objected to by Mr. Wilson, because no ground has been laid for an expression of opinion by the witness on that subject.)

A. Well, that is a difficult question to answer. The improvements on that property are of such an expensive character that to state what would be the marketable value of property of that kind is almost an impossibility, for the reason that there are very few people in this District who would be able to buy it for any-
754 thing like what it cost, and its real worth is a good deal more than what it would probably sell for.

Q. Well, what is it worth and what would it probably sell for?

A. Well, I should think $100,000 would be a very low valuation of the property.

Q. Have you had anything to do with either this case or the case of Pepper *vs.* Shepherd, No. 6201, in this court?

A. I have not.

Q. Were you present at an argument on the 6th September, 1879, before the special term held by Judge McArthur, upon the petition of Shepherd, praying an injunction to stop the threatened sale of this house, and did you hear any discussion by anybody as to the effect of any modification or pretended modification made on the 26th July preceding of the decree in that case?

(Question objected to by Mr. Wilson as immaterial and incompetent.)

A. I was present. I do not remember the exact date; it was after the summer vacation when there was a hearing had on some motion in this case.

Q. Was the form and effect of the order of 26th July, 1879, discussed in that argument that you know of?

755 A. It was.

(The above question and answer is objected to by Mr. Wilson as immaterial and incompetent.)

Q. State as well as you can what happened.

A. My recollection of the matter is substantially this: You (Mr. Totten) objected to something that was inserted in some order signed by Justice McArthur at the instance of Mr. Wilson in your absence, and wanted to have that portion of it—the objectionable portion—stricken out or modified, asserting (I forget now what the particular wording of the order was or what was claimed to be the effect of it, but you asserted) that it might be claimed under the construction of that order in the way in which it was worded that it would have some effect upon the merits of the case or be an adjudication in respect of the particular matter; and Justice McArthur——

Mr. Wilson (interposing): I object to any statement by the witness as to what was said to the court and what was said by the court in granting that order, and the answer is so obviously improper, immaterial, and irrelevant that before the witness proceeds to answer it counsel for the defendants asks that the opinion of the court may be obtained thereon, and I ask that that question shall be certified to the court.

756 (The examiner declines to certify the matter to the court unless the witness shall refuse to answer the question.)

The Witness (continuing): Before answering further I would state that I am familiar with the questions involved in this litigation, and that if I could see the order to which I have referred it would refresh my recollection, and I could state then what particular part of it that objection was made to.

(Paper here handed witness, and, after examination of the same, he continues as follows:)

Upon reading the order which has just been handed me, passed on the 26th day of July, 1879——

Mr. TOTTEN: In what case?

A. In No. 6201, equity (it is 6210 on the face of it and 6201 on the back). It is the case of Pepper against Shepherd and others. My recollection is that under the original decree in this case Mr. James M. Johnston was substituted as trustee in the place of Mr. Andrew C. Bradley under the deed of trust referred to in the proceedings in the case recorded "in Liber —" of the land records of the District of Columbia; that there were two deeds of trust mentioned in the proceedings in the cause, in each of which Mr. Bradley was trustee, and that it was claimed that this order of July 26th might
757 be construed as virtually filling the blank in the original decree as to the record of the deed of trust under which Mr. Johnston was substituted as trustee, this order referring in express terms to the deed of trust recorded in Liber 754, folio 51, of the land records of this District. On the occasion referred to Mr. Justice McArthur stated that after he had signed this order of July 26th, at the instance of Mr. Wilson, Mr. Bradley came to him very much concerned, complaining that that order might be construed as affecting the original decree, and that he had stated to him (Bradley), as he (Justice McArthur) now stated, that the sole object and intention he had in signing that order was to postpone the day of sale of the property under the original decree and provide, I think, for continuing the advertisement; that he had no intention by that order of affecting in any way the original decree; that he would not so construe it, and that it could not be so construed, and would only be held as accomplishing the purpose which he had expressed in making the order. It was claimed by counsel for Mr. Shepherd—Mr. Totten and possibly Mr. Bradley, but my recollection is not very distinct as to that——

Mr. BRADLEY (interposing): No; I had nothing to do with that.

758 The WITNESS (continuing): I know it was by Mr. Totten—that the order was in black and white, and of record, and might be held subject to be construed according to the language expressed in it, and not according to the intention or purpose which the court had in making it or that the counsel had in applying for it, and he was very strenuous in his efforts to have the court modify that portion of the order. Mr. Wilson disclaimed having any intention of imposing upon the court by getting him in that order to modify or fill up the blanks in the original decree, claiming that the original decree was only susceptible of the construction which he claimed for it and acquiescing in the construction which the court put upon the order. As to the language used upon the occasion, it is impossible for me to give it. That is the substance of it, as left upon my mind.

(Mr. Wilson objects to all of the foregoing answer as being immaterial and incompetent testimony.)

Q. The court refused the application for the restraining order, did it not?

(Mr. Wilson enters a general objection to all questions and answers upon this subject as being immeterial and incompetent.)

A. I did.

759 Q. Do you know on what ground?

A. I cannot recall now the grounds on which the court refused. There was a subsequent application, I think, made by a Mrs. Gray.

Q. Do you know whether the cause was pending on appeal at that time when this discussion took place before Justice McArthur?

(Question objected to by Mr. Wilson for reasons above assigned.)

A. I think it was.

Cross-examination by Mr. HANNA:

Q. When you refer to $100,000 being a valuation of the property do you mean its auction value?

A. I mean, as I have stated, that it is a very low valuation for that property, knowing the property as well as I do; but what it would sell for at auction I would not undertake to say. If sold either at auction or at private sale, to any one who is able to purchase and live in a house of that kind, if he got it for $100,000 I think he would get a cheap piece of property.

Q. What are the dimensions of the lot?

A. I do not know the exact dimensions of the lot. It is a large double house, fronting on K St. and extending back on Connecticut Ave.

760 Q. What is the ground worth per square foot?

A. I should think that ground is worth at lea-t $2.50 a foot.

Q. What is the rental value of the property?

The WITNESS: Do you mean what it rents for now?

Mr. HANNA: Yes.

A. I have been informed that the house furnished rents for $500 a month.

WM. F. MATTINGLY.

Subscribed and sworn to before me this 29th day of April, 1880.

EDMUND A. BAILEY, *Examiner.*

JOHN F. OLMSTEAD, a witness of lawful age, produced and sworn on behalf of the complainant.

By Mr. TOTTEN:

Q. What is your name, where do you live, and what is your business?

A. John F. Olmstead; I live in this city; real-estate broker.

Q. How long have you been engaged in that business in Washington city?

A. Fifteen years.

761 Q. Do you know the property in controversy, on the corner of Connecticut — and K St., known as the Shepherd house?

A. I do.

Q. How much is it worth? How much is it reasonably worth?

A. I think it is worth $150,000.

Q. What was it worth in October last?

A. It was worth as much then as it is now, but it would not have sold for quite as much. The real-estate market was dull then.

Q. Were you present at the time Johnston and Philip, trustee-, undertook to sell this property, on the 23rd of last October?

A. I was.

Q. State the number of persons present on that occasion.

A. Well, I do not know that I could; ten or twelve.

Mr. HANNA: How many did you say—ten or twelve?

Mr. TOTTEN: Yes; he does not count the little niggers.

Q. How many bidders were there that you saw or heard?

A. Two.

Q. Who were they?

A. William H. Philip and John F. Hanna.

Q. Who made the first bid?

A. Well, I am not positive, but I think Mr. Hanna.

Q. Who made the second one?

762 A. Well, they alternated. If Mr. Hanna made the first bid Mr. Philip made the second; and if I have got it wrong, and Mr. Philip made the first bid, then Mr. Hanna made the second.

Q. Upon whose bid was it knocked down?

A. Mr. Hanna's, I think. I am not positive. I think it was Hanna's, but I am not sure.

Q. What kind of weather was it?

A. Cool.

Q. What was announced about the taxes—do you know?

A. I think it was announced that it was sold subject to the taxes, and I think there was some statement as to the amount.

Q. Who made this announcement—the auctioneer or the trustees?

A. The auctioneer; that is my impression, though I won't be positive about that. I think there was some talk between the auctioneer and Mr. Johnston. I think they had some conversation that was loud, so the other parties there heard it, but I am not certain about that.

Q. Are you sure that there were no other persons there that bid except the two that you have mentioned?

A. Well, I did not hear any others bid.

Q. Were you in such a position as to be able to hear any bid that was made?

A. I think I was.

763 Q. How far were you from the auctioneer?

A. Well, sometimes I was beside him so as to speak to him.

Q. Who was he?
A. Dowling.
Q. Do you remember the amount stated as being due for taxes?
A. I do not.
Q. Was there anything said by the auctioneer about the proposed sale including the whole of the building or part of it, and was there a *flat* exhibited there at the sale by Dowling?
A. I do not think anything was said, except that he proposed to sell "this valuable residence;" some such remark as that—general remark. I did not see any *flat* exhibited.
Q. How long did this sale proceeding last?
The WITNESS: Do you mean how long were they selling it?
Mr. TOTTEN: Yes.
A. Well, perhaps fifteen or twenty minutes.
Q. Do you know anything about an understanding amongst the crowd as to whether there was litig-tion about the premises or about the sale or not?

(Question objected to by Mr. Wilson.)

A. I did not hear anything about it—that is, I did not hear anything said about it.
764 Q. What do you say as to $50,000 being a reasonable price for that property?

(Question objected to by Mr. Wilson.)

A. Well, I stated that I thought the property was worth $150,000.
Q. And I may draw my own conclusion?
A. I should think that that was very *un*reasonable.

Cross-examination by Mr. WILSON:

Q. How did you happen to attend this sale?
A. I drove up there out of curiosity.
Q. At whose request?
A. I do not remember that anybody ever requested me to go.
Q. Do you know Mr. Pepper, who is one of the parties to this bill?
A. I have seen the gentleman; yes, sir.
Q. How long have you known him?
A. Ten years.
Q. Do you know through whose agency the loan was made secured by the deed of trust referred to in the advertisement under which this sale was made, as recorded in Liber 754, folio 51, etc.?

(Question objected to by Mr. Totten because it is irrele-
765 vant and not responsive to the direct examination.)

A. I know that the firm to which I belonged made two loans, I think, to Mr. Shepherd on that property. I think it was under one of those trusts that the sale was made.
Q. Under the direction of which one of the members of that firm was the loan referred to in that advertisement for $35,000 made?

(Question objected to by Mr. Totten because irrelevant and not responsive to the direct examination.)

A. Well, there was no direction by any member of the firm.

Q. Did you have knowledge of all the negotiations in relation to that loan so far as they were conducted by the firm?

(Mr. Totten enters a general objection to all question on this subject.)

A. I think I did.

Q. Who prepared the deed of trust to secure that loan, and examine paper now shown you, marked "Exhibit G. P. No. 1" in the suit numbered 6201 (handing paper to witness), and state if you are the person whose signature appears thereto as a witness.

A. Yes, sir.

Q. The first part of the question was, Who prepared that deed?

766 A. John Bull.

Q. At the time of the sale to which you have referred were you aware that the house of Mr. Shepherd covered or extended upon the part of an adjoining lot not covered by the deed of trust to which I have referred or by the advertisement under which that sale was made?

(Question objected to by Mr. Totten.)

A. I was aware that there was some question or had been some investigation in regard to that matter; what it was or anything about it I had no knowledge except hearsay. I think I was once before that called to the office of Hanna & Johnston to testify in regard to that matter.

Mr. HANNA: The office of Walter S. Cox, you mean?

A. Well, I do not know; it was in the Webster building, whosever office it was, and a plat was shown to me then and I was examined about it; and I stated that I did not know. That is the only knowledge I had in regard to it.

By Mr. WILSON:

Q. Do you not know that at the time of the sale the map or plat now shown to you (which is filed in cause No. 6201, George S. Pepper *vs.* Alexander R. Shepherd *et al.*) was exhibited by the trustees or auctioneer?

767 A. I did not see any plat exhibited.

Q. You did not see any plat exhibited?

A. No, sir; and I do not remember anything referred to.

Q. Do you know how much of the house of Mr. Shepherd is on the lot not covered by the deed of trust or decree under which the property was sold?

A. I do not know anything about it.

Q. You do not know anything about it?

A. No, sir.

Q. What do you mean by saying that the Shepherd house was worth $150,000?

A. I mean what I say; that is my estimate of its value.
Q. What do you estimate the ground to be worth at that place?
A. Well, I think that ground is worth $2.50 a foot.
Q. What estimate do you put upon the building?
A. Well, in making my estimate $150,000 I did not segregate the ground from the house; I treated it as a whole—as a property.
Q. That does not answer the question.
A. Well, then, you can deduct the price I put upon the ground and get my estimate of the value of the house.
768 Q. You cannot answer the question any more fully than you have done?
A. I do not know that I can.
Q. You are now actively engaged in the real-estate business?
A. Somewhat; ses, sir.
Q. Do you know any ground in that vicinity having been sold within a year for $2.50 per foot?
A. I do not.
Q. Do you — of any sales in that vicinity within a year?
A. I do.
Q. For what price?
A. I think there was a little piece on the east side of the square sold for $1.60, I think it was. I do not remember positively, but I know it was a very small piece.
Q. Do you know of any houses being sold in that vicinity within a year?
A. I do.
Q. What houses and for what price?
A. Well, the house of Mr. Kilbourn sold within a year.
Q. For what price?
A. Well, I understood that it was sold for about $65,000; I was so informed.
Q. To whom?
A. General Bradley.
Q. Do you know the time of sale?
769 A. I do not; only I know he assumed the mortgage that was upon it for $35,000 to Mr. Pepper.
Q. That was a fair price for the house?
A. Well, I do not think it was a fair price for his house.
Q. What do you think would be a fair price if it were sold?
A. Well, I know it cost about $90,000. That was when building material was very much higher than it is now.
Q. If his house was worth $65,000 do you think the Shepherd house was worth $150,000?
A. I do.
Q. What do you base your judgment upon?
A. General information, acquired by some considerable practice.

By Mr. HANNA:

Q. In this particular case?
—. ——.

Mr. WILSON (to the witness): Is that the only answer you can give to the question?

A. Well, I do not know what you mean by the question as to what I base my judgment upon.

Q. That is just what I mean by the question.

A. Well, I have given my judgment as to the value of the property, and base it upon the information I have as to property
770 in the city in regard to the values of property.

Q. Do you know what that property cost?

A. No; I do not. I did know, but I have forgotten.

Q. You state that you base your opinion upon the value of other property in the city. Do you know of any other houses with which you can connect that, or do you know about any sales which will aid us in understanding upon what your judgment was based?

A. Well, I think the sale I have alluded to, of Mr. Kilbourn's house, is a pretty fair basis.

Q. Any other houses?

A. There are no other houses in town that compare with it in value.

Q. There are none that compare with the Shepherd house?

A. There are not.

Q. Did you ever hear any offer; do you know of any person ever willing to give $150,000?

A. I do not.

Q. Did you ever have any application made to you to buy it as agent?

A. I never had the agency of it.

Q. Your estimate of $150,000 is for the house alone?

A. For the property as it stands.

Q. It does not include the furniture?

A. Oh, no, sir.

771 Q. And your estimate is on the whole house?

A. My estimate is on the property just as it stands.

Q. Including the part that stands on the other lot?

A. I do not know anything about that; I have heard that there was a difference, but that is mere hearsay, and I don't know anything about that.

Q. You never have examined any plat with reference to it?

A. I never have. (After a pause:) I say I never have; I was shown a plat of the property in the office of Hanna & Johnston. Mr. Cluss was exhibiting a plat there, and I was asked if I knew that that house covered more ground than was in that trust, or something about that, or that a part of the house was on another lot; that isthe only thing I knew about it.

Q. Has that property any market value? If so, what is it?

A. Well, it is one of those peculiar pieces of property that is hard to sell. If a party wanted it and it suited him it would have a very high market value.

Q. At a forced sale under a deed of trust don't you really think it would be impossible to get a bid higher then $50,000?

772 A. No; I must say that I think that was a ridiculously low price.

Q. At a forced sale under a deed of trust don't you think it would be impossible to get a bid higher than $50,000, or would have been at that time?

A. Well, that was all the bid there was at that time. It was the highest bid that was given at that time—$50,000. I think it is one of those properties that would be hard to sell, unless it happened that it was well known and there were parties who wanted to buy property of that class, of which there are very few; and I think that, unless there were parties who wanted to buy such a property and who were cognizant of it, it would be impossible to sell it at anything like its value.

(Last question repeated.)

A. Well, I do not know that I can answer the question any better than I have.

Q. You cannot?

A. I do not see that I can.

Q. Have you any idea what the property would sell for now under a deed of trust at a forced sale?

A. Well, I think it would sell a good deal better now than it did then.

Q. What do you think it would sell for now?

773 A. I have answered that by answering the other question. It is one of those peculiar pieces of property that would not sell at anything like its value, unless it happened that parties were cognizant of it and wanted such property.

Mr. HANNA: Mr. Olmstead, please answer the question directly.

Mr. TOTTEN: Mr. Hanna, one at a time, if you please.

By Mr. WILSON:

Q. What do you think it would sell for now? If you have any idea, state it. If you have not, say so.

A. Oh, I have not any idea what it would sell for now. I knew that Mr. Jessup once offered, I think it was, $150,000 for it.

Q. When was that?

A. I do not know. I think it was since Gov. Shepherd's failure.

Q. Since the failure?

A. Yes, sir; though I am not positive about it. It might have been before. I know the Governor offered to sell it to Mr. Jessup.

Q. Mr. Jessup was a very large creditor of Mr. Shepherd's, was he not?

A. I think he was. He loaned him a good deal of money.

Q. Was not that offer to take the house in part satisfaction of his debt?

774 A. No; I think not. It might have been that it was proposed to take that house and release in part some other property that he held incumbrances on.

Q. It was not, then, a purchase by an outside and uninterested party?

A. He wanted the house and manifested a desire to have the house several times.

Q. That does not answer the question. It was not a purchase, then, by an outside and uninterested party?

A. I do not know how it was, unless it was to get the house.

Q. Was it not to satisfy a part of his debt?

A. I do not know. That was when, as I understood it, the relations between Gov. Shepherd and Mr. Jessup were entirely friendly and Mr. Jessup was entirely satisfied with his securities.

Q. Was not at that time Gov. Shepherd indebted to Mr. Jessup? Didn't you understand that he was indebted to him?

A. Mr. Jessup had loaned him a good deal of money at other times.

Q. He was indebted to him, then?

A. Certainly he was indebted to him. Mr. Jessup offered to take up this deed of trust off Mr. Pepper's hands.

Q. He did offer that?

775 A. Yes.

Q. To your knowledge?

A. I did not hear him make the offer; he told me he did.

Q. When was it?

A. I think it was shortly after Mr. Shepherd's failure. I was in Philadelphia; I was over to see about some other matters; and I know he told me that he had seen Mr. Pepper and offered to take that loan off his hands.

Q. You got that from Mr. Jessup?

A. I did.

Q. Can you state relatively the value of the house and the value of the land on which it is situated?

A. Well, I do not think the house could be built to-day for $100,000; I do not think the house could be built and furnished as it is. It is a very elaborately finished house.

Q. For $100,000?

A. No, sir.

Q. You do not include the ground?

A. I say I do not think the house could be built for $100,000, and I stated that I thought the ground was worth $2.50 per foot, and that would make a difference between the house and ground.

By Mr. HANNA:

776 Q. What, in your opinion, could it be built for to-day?

A. Well, $100,000 is a good deal of money, and could build a very good house.

Q. Could it build a house like that?

A. I do not think it would.

Q. How much more would be required?

A. I do not know.

Q. About how much more?

A. Well, I am unable to state.

By Mr. WILSON:

Q. How much ground does the house cover?

A. I do not know.

Q. Then you are unable to form any opinion as to the value of the ground?

A. The number of feet could be easily deducted.

Q. But you have fixed the value of the house and the ground at $150,000.

A. That is, I have fixed the value of that property as it stands at $150,000.

Q. I have asked you to fix the respective value of the house and ground, and to state how you arrived at $150,000.

A. Well, I took the property as it stood and placed it at $150,000, and gave it as my estimate of the value of the property.

Q. Have you any idea how many feet there are in that ground?

A. I do not know, but I think there are about 7,000 feet.

777 Q. About 7,000 feet?

A. That is a mere impression; it may be entirely out of the way.

Q. Then the ground would be worth between $17,000 and $18,000, would it?

A. If there were 7,000 feet; yes, sir.

Q. Then, if there were 7,000 feet at $2.50 a foot, the remainder of the $150,000 would be the value of the house?

A. Yes, sir. I do not know, however, the number of feet.

Q. Is it your judgment, as a business man and as a real-estate agent, that under a forced sale—under a sale under deed of trust—that property would bring $150,000?

A. No, sir.

Q. Is it your judgment that under such sale the property could be sold for $100,000?

A. Well, I think it ought to sell for $100,000.

Q. Is it your judgment as a business man that it would sell for that, or would have sold for that in October or at any time within a year?

A. Well, up to within the last two months there is scarcely any property in the city which, if put under the hammer at a

778 forced sale, would sell, in my judgment, for 50 per cent. of its value. There was no market, there was a perfect stagnation here in every class of property, and in property of that magnitude, of that value, the chances would be less than of smaller property of its bringing its value.

Q. In view of the condition of the market for real estate in October last and the great depression in the value of real estate at that time, do you not think that the sum of $50,000 was as much as that property could reasonably have been expected to bring at a forced sale?

A. I think that property ought to have sold at that time for $100,000.

Q. You do not answer the question.

A. I embrace the whole question in my answer. That under the depression, everything considered, at that time I think the property ought to have sold for $100,000.

Q. You think, then, that that particular property, notwithstanding what you have just stated about the general depression in the real-estate market, would have brought or ought to have brought more than 50 per cent. of its value?

A. No. I said that no property, up to within the last 2 months, in the city, if put at public auction, at forced sale, would bring over 50 per cent. of what it should bring. I mean by that there was no market for property; that it was ruinous to property interests to sell at that time.

Q. Do you know of any large or valuable piece of property sold at that time under deed of trust?

A. No; I do not.

779 Q. Was the sale conducted with entire fairness as far as you know?

A. I didn't see anything that was not fair.

Q. There was a perfect opportunity for anybody to bid who wanted to bid, was there not?

A. Yes, sir; I think so.

Q. From the fact that nobody bid over $50,000 for that property, what do you infer as to its value?

A. There was no one there to bid.

Q. It was advertised, was it not, sufficiently?

A. It was.

Q. Don't you consider that pretty good evidence that nobody wanted it?

A. Apparently; yes.

Q. What do you understand to be meant by the words "market value" of real estate?

A. Well, it has not meant anything for the last seven years.

Q. Until within what time?

A. Until within the last two or three months.

Q. The condition of affairs has entirely changed, then, within the last two or three months?

A. I think so.

By Mr. JOHNSTON:

Q. I would like to ask you a few questions, Mr. Olmstead. Do you know Dr. Harvey Lindsly?

A. Yes, sir; I see what you mean—that there was nobody

780 there to buy that property. The only person that I remember that was there, outside of those who were lookers-on, who would not in any event buy anything, was Dr. Lindsly. I do not know any other person who was there who would have bought any property at any price.

Q. Do you know Col. Bliss, son-in-law of Mr. Bancroft?

A. Yes, sir; he was there.

Q. Were not Col. Bliss and Dr. Harvey Lindsley men of means?

A. I do not know anything about Col. Bliss—about his means.

I have always supposed that he was a gentleman of leisure, but whether or not he had any means I do not know.

Q. Was there anything which the trustees could have done at that sale to have benefited Mr. Shepherd other than they did do, acting, as they were, under the instructions of the *cestui que trust* to put the property up for sale?

A. Well, that I am unable to say.

Q. Did you see anything?

A. I did not see anything irregular in their action; I was simply a looker-on. I was there for idle curiosity.

781 Redirect examination by Mr. TOTTEN:

Q. Is it not true, generally speaking, that nobody has been in the habit for the last six or eight years of buying at sales made under deeds of trust except the beneficiary in this city?

A. That is substantially true; there are very few exceptions.

Q. Practically speaking, the sales under deeds of trust for the last few years have been frauds upon the owners, have they not?

A. Well, I have stated that within the last few years property had sold, in my judgment, for 50 per cent. of its value. I think that where property has been sold it has been to the benefit of the holder of the trust.

Q. Have you made or attended sales made under deeds of trust frequently within the last few years?

A. Yes, sir; attended them; have not made them.

Q. Did anybody expect, so far as you know, that a *bona fide* sale to an outsider would be made under a deed-of-trust sale?

A. Well, in some cases small properties have been picked up by outside parties, generally at a trifle over the amount of the incumbrance.

782 Q. What is the character of the Shepherd house—I mean the construction of the building, as to the manner of building it and as to the material of which it is built?

A. Well, it is one of the most expensive and extravagantly built houses in this city?

Q. Is it brick, wood, or stone?

A. All.

Q. The front is made of white Ohio stone, is it not?

A. The front is of Ohio stone, brick back.

Q. What is the front on Connecticut avenue?

A. That is brick, I think.

Q. All except the "tower" or "bay-window," or whatever you call it?

A. Yes, sir.

Q. How does the Shepherd house compare with the Kilbourn house as to the manner of construction, material, etc.? The cost of it I allude to.

A. Well, so far as the walls are concerned, the outside portion of the two houses were constructed very similar.

Q. Which is the larger?

A. The Shepherd house. The finish of the Shepherd house is very much more elaborate than the Kilbourn house.

Q. Is the Shepherd house much the larger of the two?

A. I think it is considerably larger.

783 Q. What would be the effect on the sale of a house of that kind (provided you had a large number of competing bidders or of persons who wanted the house) of the fact that the sale of it was only for a portion of the ground, selling only the front part of the house and leaving a portion of the back part of the house, beyond the mortgaged property?

A. I do not think anybody would buy it.

Q. Practically it would prevent sale?

A. Well, I do not think any practical man would bid on it.

Recross-examination by Mr. WILSON:

Q. Do you think it is a fraud upon an owner for a man who loans him money to endeavor to collect it by foreclosing the deed of trust given to secure it?

A. No, sir.

Q. Do you think it a fraud upon the lender for the owner to endeavor to prevent the collection of money loaned upon property by claiming that the house has been extended to property not covered by the deed of trust?

A. Well, the question of fraud is something that I am not very familiar with.

784 Q. Well, I thought that you were, as Col. Totten founded his question upon your opinion of frauds generally. So far as you know, is there any question of fraud here upon the part of Mr. Pepper?

A. I have not heard the question of fraud raised here in any way.

Q. Do you know through whose fault it was that the house was partially upon ground not covered by the deed of trust?

A. I do not.

Q. Do you know that it was not the fault of Mr. Pepper?

A. I do not know that it was not his fault.

Q. You do not know that it was not?

A. I do not know that it was the fault of any one.

Q. Do you know that it was his fault? Do you know how it happened?

A. I do not. Mr. Pepper designated Mr. Wm. H. Philip to act as his attorney in all matters of loans, and the papers, the abstract of title, was to be furnished to Mr. Philip, the deed of trust was to be submitted to him, and the estimate of the property, and when he accepted those papers Mr. Pepper furnished the money—accepted the loan.

785 A. At the time the money was advanced by Mr. Pepper did you personally know what the deed of trust covered?

A. I knew what it described.

Q. Was the house at that time erected?

A. It was not finished; I think it was partly erected.

Q. Was the library on it?

A. I do not remember whether it was or not.

Q. Did you know at that time that a part of the building or a part of the library——

Mr. HANNA: The picture gallery.

Mr. WILSON (continuing): The picture gallery, I meant to say, was on ground not covered by the deed of trust?

A. I did not; I did not know, until the question was asked me in the office of Hanna & Johnston, that the deed of trust did not cover the whole property.

Q. Up to that time did you suppose that it did?

A. I did suppose that it did.

Q. If the property were now free and unincumbered and the owner desired to obtain a loan on it, would you advise any person applying to you, as a real-estate agent, to loan on it $50,000?

A. I would.

786 Q. You would?

A. Yes, sir.

Q. You would think it good and sufficient security, would you, for a loan of $50,000?

A. I would.

Q. To-day?

A. To-day.

J. F. OLMSTEAD.

Subscribed and sworn to before me this 27th day of April, 1880.

EDMUND A. BAILEY, *Examiner.*

Adjourned to Saturday, April 3rd, 1880, at 2 o'cl'k p. m.

EDMUND A. BAILEY, *Examiner.*

WASHINGTON, D. C., SATURDAY, *April* 3d, 1880.

Examination postponed to Tuesday, April 6th, 1880, at 2 o'clock p. m.

EDMUND A. BAILEY, *Examiner.*

787 WASHINGTON, D. C., TUESDAY, *April 6th*, 1880.

Met pursuant to postponement.

Present: Mess. Totten, Wilson, Hanna, and Johnston; and, no witnesses appearing, adjourned to Tuesday, April 8th, 1880, at 2 o'clock p. m.

EDMUND A. BAILEY, *Examiner.*

WASHINGTON, D. C., THURSDAY, *April* 8th, 1880.

Met pursuant to adjournment.

Present: Counsel for respective parties, and, owing to absence of witnesses, adjourned to Tuesday, April 13th, 1880, at 2 o'cl'k p. m.

EDMUND A. BAILEY, *Examiner.*

WASHINGTON, D. C., TUESDAY, *April* 13*th*, 1880.

Examination postponed until further notice.

EDMUND A. BAILEY, *Examiner.*

788 WASHINGTON, D. C., FRIDAY, *April* ,16*th* 1880.

Met pursuant to notice.

Present: Enoch Totten, Esq., counsel for complainant; Messrs. Nathaniel Wilson and John F. Hanna, counsel for the defendants, Andrew C. Bradley, Esq.; James M. Johnston, Esq., in *propria persona*, as trustee, and Alexander R. Shepherd, complainant.

ALEXANDER R. SHEPHERD, the complainant, produced and sworn on his own behalf:

By Mr. TOTTEN:

Q. Mr. Shepherd, are you the complainant in this case?

A. I am.

Q. You were not present at this effort made to sell your house on the corner of K St. and Connecticut avenue, were you?

A. I was not.

Q. Were you in the city at the time?

A. I was not.

Q. Of what kind of material is that house built?

A. The outside walls, front and side walls, are of Connecti-
789 free stone; the rear wall and picture-gallery wall are of brick.

Q. Can you give us a statement or an accurate estimate as to the cost of that entire house and grounds?

A. The entire cost of the house and grounds, exclusive of the furniture, was $184,000.

Q. What, in your judgment, was that house worth last October—that house and lot—the whole of it?

A. I think, taking the depreciation of property into consideration, it was worth $125,000, taking off one-third.

Q. By the proposed sale or this effort which they made to sell the property they only undertook to sell a portion of the house, leaving off from the rear part of the house a large portion of the back building. What effect——

Mr. JOHNSTON (interposing): On behalf of the trustees I object to that question in that form.

Mr. TOTTEN (continuing): What effect would such a sale of such property have as to the result?

The WITNESS: You mean a sale if it should be maintained?

Mr. TOTTEN: No; I mean what effect would that fact have
790 upon the minds of bidders, ordinarily speaking, in your judgment?

(Question objected to by Mr. Hanna.)

A. Why, it would render it valueless.

Q. What is the portion of the house used for which would be omitted by this sale?

A. It is used for a laundry, coal vaults, servants' sleeping-rooms.

Q. Is there any way in which that portion of it not pretended to

be sold by them could be separated from the front part of it, which they undertook to sell?

A. None that I know of, and maintain the status of the house.

Q. Those portions could not be used separately, could they?

A. I do not see how they could.

Q. Are you acquainted with the rear line of the property, which they pretended to sell?

A. I am.

Q. I mean as to its location?

A. I am.

Q. About how much of the rear building does it leave out?

A. It would take off two-thirds at least.

Q. What kind of a street is Connecticut avenue, as to the character of the people who live there and as to the character of the travel which passes over it?

791 A. Equal to any of them.

Q. Is it a much-used thoroughfare or slightly used?

A. Very much used.

Q. Does a line of street cars pass along on that street?

A. Yes, sir.

Q. What line?

A. The "F St." line.

Q. From where to where does that line run?

A. They run to the P-street bridge, West St., Georgetown.

Q. And to what other points?

A. To the Capitol and on East Capitol St.

Q. It runs to the Arsenal also?

A. Yes, sir; from the Arsenal up 9th St.

Q. What kind of people live in the neighborhood of that residence—I mean all about in that district?

A. First-class people, so far as I know.

Q. Are there any houses adjoining this residence; and, if so, whose?

A. The house is adjoined on the east by a house owned by some gentlemen in New York (Dr. Bruen), occupied by General
792 Wadsworth's family now. There is a space of a few feet between the end of the rear building and a house owned by Lewis Davis, of the firm of Lewis Johnson & Co.

Q. Does this house stand alone or is it in a block?

A. It is the end house of a block.

Q. It is the end house of a block consisting of how many houses?

A. Consisting of three houses.

Q. What is the front of this property on K St.?

A. About 46 feet on K St.; about 80 feet on Connecticut Ave.

Q. What is the distance from the door to the extreme rear of the building—the distance from the front door?

A. About 103 feet, I think.

Q. How many stories high?

The WITNESS: The main building?

Mr. TOTTEN: Yes, sir.

A. The main building has a sub-cellar about 14 feet in hight; a

basement about 9 feet 6 inches in the clear; a principal story about 18 feet, I think—between 16 & 18; a second floor of about 14 feet in the clear, and a third floor of about 10 or 11 feet in the clear.

Q. What is the value of that property as it stands to-day?

793 A. I think it is worth $125,000.

Q. Has there been any advance in the price of real estate in the past year?

A. I cannot answer, as I have not been here much in the last year.

Q. Mr. Shepherd, please to state in what manner this house is finished on the inside, as to workmanship and material?

A. It is finished in the most expensive manner, both as regards material and workmanship.

Q. How does the house compare, as to room and accommodations for a large family, with other houses generally in the city?

A. I think it has more accommodations than any other house in Washington.

Q. Does it contain all the modern improvements?

A. It does.

Q. State what they are. How about water-closets, etc.?

A. Well, the house, to begin with, has plate-glass throughout, on the side and front and rear. It is finished in the first floor in a variety of woods—satin-wood and mahogany and walnut. The stairs are very handsomely built in black walnut. The house is frescoed throughout in the most expensive manner, and generally fin-

794 ished as finely as any house I ever saw.

Q. How does it compare in the manner of finish with the two houses in the same block—the Kilbourn house and the other one?

A. There is no comparison. I put the man who finished the second house and the other two houses (a German named Glass), with his traps, his finishing, and everything that had been contracted for by this abomination named Cluss out of the house one day, and paid him $2,000 in full for his work, and had the house finished by Pother & Stymns, of New York. There is no comparison. One is finished in the best manner of any house in the country, and the others are located — both the other houses——

Q. For how much would you be willing to sell that house to-day?

A. I would not sell it for less than $125,000, for the house.

Q. What is your interest in this house now, Mr. Shepherd, or what was it at the time you filed this bill?

A. Well, in 1876, when I suspended payment, I made a trust covering all my property, both encumbered and unencumbered, and this house was amongst the encumbered items and was put

795 down in the schedule at its cost price—at $184,000.

Q. What has become of that trust?

A. The trust is still in existence, and it has never been satisfied.

Q. Has any part of it been satisfied?

A. Well, certain settlements have been made under the trust.

Q. Well, I meant to ask you or want to find out whether the

amount of indebtedness secured by that trust had been reduced in any way.

A. It has been reduced by the application of portions of property towards its extinction, and I myself have put in some $100,000 in money into the estate in settlement since that time—that is, I put it in from money borrowed by me.

Q. If this debt represented by Pepper's notes were paid would there be anything remaining for you; and, if so, how much? I wish a general statement of it. Of course I do not require you to be accurate.

The WITNESS: You mean if this sale should stand?

Mr. TOTTEN: No; I mean if the notes of Mr. Pepper's were paid. If you were to pay the Pepper debt would there be anything in the house for you?

The WITNESS: Do you mean if I were to pay the notes?

796 Mr. TOTTEN: Yes, sir.

A. I should think there would be $75,000 in it.

Q. Mr. Shepherd, it seems that in the description of this property as given in the deed of trust (one or both of them) to secure Pepper a portion of this house was omitted; the rear line is so run as to cut off a large portion of the back building. Can you explain how that happened, and can you state whether you knew anything about it at the time; and, if you did not, when did you first find out that that was a fact? Give us a history of the making of that loan from Pepper, if you will, in that connection—what you had to do with it.

A. Well, I have already testified in an examination had in the former suit that this loan was made through the agency of Kilbourn & Latta, and that the papers and abstracts and all were prepared by them and signed by me. I did not know at the time that the property was not all covered by this trust, nor did I know of the existence of a claim by the heirs of Arnold Harris on the rear lot which invalidated the title.

Q. Do you know how it happened that this description was so given in the trust deed?

797 A. I do not.

Q. Who drew the trust deed?

A. The parties who made the loan—Kilbourn & Latta.

Q. For whom were they acting?

A. For Mr. Pepper.

(Question and answer objected to by Mr. Hanna.)

Q. Did Kilbourn & Latta or Mr. Pepper or anybody for him ask you in relation to the description of the property?

A. Not at all.

Q. Did you have anything to do with the examination of the title?

A. No, sir.

Q. Did you have the abstract made?

A. No, sir; I did not.

Q. When did you first ascertain that this description had been so made; when did you get that information?

A. About the time that proceedings were instituted to force me to a settlement.

Q. By Pepper?

A. Yes, sir.

Q. You allude to the former suit?

A. The former suit; yes, sir.

798 Cross-examination by Mr. HANNA:

Q. Mr. Shepherd, you had notice of the sale which you filed a bill in this case to set aside?

A. I had no notice.

Q. Did you know that the property was advertised for sale?

A. I did a day or two before it was sold; somebody sent me a copy of the paper.

Q. Did you not have counsel here representing you in respect of this property in this city?

A. I have had counsel representing me in respect of the former suit ever since the suit began. I was out of the country from the 1st July until about the 1st October.

Q. I understand you to say, then, that you had no notice of the sale beyond what you have stated?

A. A few days before the sale transpired somebody sent me a copy of the paper that the property had been advertised.

Q. You borrowed from Mr. Pepper the sums of $35,000 and $10,000 June 3rd, 1874, and March 2nd, 1875, which were secured by deeds of trust on your house, the property involved in this suit?

799 A. I borrowed those sums. I do not recol-ect about the exact dates.

Q. The principal of those loans is still unpaid?

A. Yes, sir; it is.

Q. When was your last payment of interest on the first loan?

A. I cannot tell without looking at the papers.

Q. Have you paid any interest on that loan since June 1st, 1876?

A. I think not.

Q. When you executed these trusts on what property did you propose to secure the loans?

A. On the whole property.

Q. Did you read over the first deed of trust before executing the same?

A. I did not.

Q. Why not?

A. Well, you will have to ask me something easier than that. I do not know why I did not.

Q. Are you in the habit of giving deeds of trust of $35,000 without reading them over to see what you are signing?

A. Not in the habit, because I did not have a great many pieces of property that I could have borrowed that amount on.

Q. I ask you again if you can give any reason why you omitted to read over the trust.

800 A. I can give no reason. I supposed that the parties who were acting for Mr. Pepper, negotiating this loan, knew the property that they were intending to give a trust on.

Q. Did you give Kilbourn & Latta commissions for negotiating this loan?

A. I think I did.

Q. Did you direct them to have the abstracts of title prepared?

A. I gave them no directions whatever. I stated to them that I wanted to borrow a certain amount of money, or rather they volunteered to borrow a certain amount of money, and I told them to borrow it, and when they presented the papers for signature I signed them.

Q. You had had transactions with them before—Kilbourn & Latta?

A. I may or may not. I do not recollect.

Q. Well, did you or did you not?

A. I cannot answer the question.

Q. You did not?

A. I can't answer the question.

Q. You cannot now say whether you ever had any transactions with them?

A. I cannot.

Q. Had you ever employed them to negotiate any loans before?

A. I think not.

801 Q. Are you certain about that?

A. I am not certain, but I think not.

Q. Were you familiar with this property—very familiar with it?

The WITNESS: How do you mean?

Mr. HANNA: Its description.

The WITNESS: Well, explain yourself, Mr. Hanna.

Mr. HANNA: I mean the description of the ground, the plat.

A. I think not, any more than I probably was when I purchased it, but I do not think that I probably knew what the size of the lot was, and all that.

Q. Didn't you know the exact dimensions of the lot upon which you proposed to build a house that was to cost so much money?

A. I knew, probably, at the time I commenced to build the house.

Q. At what stage in the construction of the house was the work when you made these loans upon it?

A. Well, when the first loan was made the house was being plastered, and when the second loan was made the house was finished.

Q. Did you subdivide this lot before getting your plans?

The WITNESS: Which lot?

802 Mr. HANNA: Upon which house is constructed. Did you subdivide the lot for the purpose of the building which you were to construct?

A. I made a subdivision, I think, of a portion of the lot—cut off a portion, I think.

Q. When was that?

A. I can't tell you; after I bought it.

Q. What was that subdivision?

A. Well, the records will show; I cannot tell you without referring to them.

Q. You do not remember?

A. Why, no, Mr. Hanna; I was building 100 houses at the time—100 or more.

Q. Was not this the most important?

A. No; I was building a much more important one on the corner of 12th & the avenue—a much more expensive house than this even.

Q. This was a house that you intended for your home?

A. Yes, sir; this was a house that I intended for my home, and still intend it.

Q. Your purpose, I understand you to say, was to give Mr. Pepper a security for all of the property upon which your house was constructed and its appurtenances?

A. I have so stated.

Q. Would that have been all of the lot 3 of your subdivision of the square?

803 A. That I cannot answer without referring to the subdivision.

Q. You authorized the recording in the surveyor's office of the subdivision?

A. I did.

Q. Was this before the execution of either of the deeds of trust?

A. It was.

Q. Why was not the property described as "lot 3" according to your subdivision?

Mr. BRADLEY: Where?

Mr. HANNA: In these deeds of trust.

The WITNESS: You will have to ask the person who prepared them; I do not know.

Q. Did Mr. Pepper know, or did you suppose that he knew, that the description of the land covered in the deeds of trust covered only a portion of the property?

A. I had no knowledge of the existence of G. S. Pepper.

Q. Well, answer the question.

A. Well, I will answer it. I stated that these parties proposed to make a loan on that property, and I told them to make it, and they submitted the papers to me for my signature, and I signed them, and they gave me the money. The proposition came to them

804 to loan the money from some person in Philadelphia, I understood; it was not a solicitation on my part, nor did I know who the party was.

Q. They were, then, real-estate agents and brokers in this city?

A. Yes, sir.

Q. Is it the custom for the lender to pay commission to brokers or real-estate agents?

A. Well, I do not think there is any well-established custom in relation to it. It depends upon a person's necessities very largely.

Q. Do you know of any case of a lender paying the commissions to a broker for loaning money for him?

A. I do not know.
Q. Did you ever do so?
A. I may have done so.
Q. Did you?
A. I cannot answer at this moment without further reflection.
Q. Well, do you think you did?
A. Well, I won't even venture a thought upon the question.
Q. Well, did you suppose that Mr. Pepper would have loaned you these large sums of money if he had not supposed that the deeds of trust covered the whole property?
805 A. Well, I would not venture an opinion, Mr. Hanna. I did not know Mr. Pepper.
Q. Would you have done so if you had been in Mr. Pepper's place?
A. I have done a good many things that I ought not to have done.
Q. Would you have done so?
A. I have loaned money on insufficient security many times.
Q. When did I understand you to say that you first understood that the deeds of trust did not include the whole property?
A. About the time Mr. Pepper instituted proceedings against me.
Q. Was it before or afterwards?
A. I cannot answer that positively.
Q. What is your best recollection on the subject?
A. I would not volunteer a recollection on it?
Q. Have you thought about it?
A. I have not.
Q. Have you any means of ascertaining that fact?
A. Well, I can't answer at this moment. I might have by going into the subject pretty thoroughly.
Q. How did you learn that?
A. That I cannot answer.
Q. Why not?
806 A. Simply because I cannot.
Q. Did you inform Mr. Pepper of the mistaken description when you discovered it?
A. I may have done so and I may not have done so. I cannot answer it.
—. ——.
A. I do not. I simply want recollection.
Q. Did you take any means to correct it?
The WITNESS: Any means to correct what?
Mr. HANNA: To correct the mistake in order to carry out your bargain with him.
A. I am not aware that I took any.
Q. Do you mean to claim now that because those deeds of trust given to secure Mr. Pepper did not embrace the rear part of the property that Mr. Pepper should not have his claim enforced?
A. I mean to quote a little piece of Scripture to you—"They who take up the sword shall perish by the sword."
Q. I want you to answer the question.

A. Well, I answer it just in that way.
Q. Do you mean that he should not get his money?
A. That (referring to examine-'- notes) is my answer.
Q. (Last question repeated.)

A. There are a large number of persons interested in this
807 suit as well as myself who have rights just the same as Mr. Pepper has, and he cannot sacrifice any property so long as I can protect their rights and my own rights.

Q. What interest have you in this property after the payment of the other encumbrances upon this property and the payment of your unsecured debts?
A. The property belongs to me.
Q. What interest, in dollars?
A. I have before said that I thought about $75,000 over and above Mr. Pepper's claim.
Q. The principal and interest due Mr. Pepper will exceed $60,000, will it not?
A. Well, the papers will show. I have not any recollection about it.
Q. Is there not an encumbrance, a third deed of trust, on the property in favor of Mrs. Gray?
A. A second deed of trust.
Q. No; a third deed of trust; there are two in favor of Mr. Pepper.
A. Yes, sir; there is a deed of trust to Mrs. Gray for $30,000.
Q. How many years' interest is there due on that?
A. I would not undertake to answer without referring to papers.
Q. How many, approximately?

A. Well, you have the papers; you can tell.
808 Q. Have you ever paid any interest on it?

A. That I cannot answer without referring to the papers. (After a pause:) I have paid interest to Mrs. Carter on that loan.

Q. How much?
A. I give it up; the papers will show.
Q. What papers?
A. Her notes.
Q. What amount of judgments stand against you?
A. I give that up; the records will show.
Q. What is the amount of your unsecured indebtedness?
The WITNESS: At present?
Mr. HANNA: Yes, sir.
A. I can't answer.
Q. Approximately.
A. I can't answer approximately.
Q. Can you state within $10,000 or $20,000 of it?
A. No, sir; not within $100,000.
Q. Is it as much as $100,000?
A. It is.
Q. Is it as much as $200,000?
A. That I will not undertake to say.
Q. Is it over $200,000?

A. That I will not undertake to say. I have not had a chance since I have got back to make up a statement.

809 Q. What was the amount at the time of your assignment referred to?

A. Oh, I reckon two or three hundred thousand dollars.

Q. How much of that have you paid since?

A. I have before said that I cannot answer the question, Mr. Hanna.

Q. Your assignment covered all of your property, did it not?

A. Everything.

Q. Can you designate what property remains unsold which passed under the assignment?

A. I can by reference to the papers; I cannot without them.

Q. Have you acquired a title to lot "A," in the rear of your house, being the lot not included in your deeds of trust?

A. I have not a title.

Q. Do you know who has it?

A. I do.

Q. Who has it?

A. I shall not answer.

Q. Did you negotiate the transfer?

A. I did not.

Q. Did anybody for you?

A. They did.

Q. Is it held in trust for you?

A. It is not.

Q. When was this transfer negotiated?

810 A. I cannot answer.

Q. Because you don't remember?

A. Because I don't remember.

Q. Can you tell about when?

A. I cannot.

Q. At the time the deed was delivered to the person whose name you will not disclose did you know that lot "A" was not included in the Pepper deed of trust?

The WITNESS: Did I know that lot "A" was not included?

Mr. HANNA: Yes, sir.

A. I cannot answer that; I do not recollect. I cannot answer that; my memory would not bear me out in it.

Q. Have you any recollection on the subject?

A. I haven't any distinct recollection.

Q. Well, I understand you to say that you have an indistinct recollection?

A. I have not any distinct recollection of that.

Q. Have you an indistinct recollection of it?

The WITNESS: Well, what do you mean by an "indistinct" recollection?

Mr. HANNA: Well, I mean exactly what I say.

A. Well, I mean exactly that I can't understand you. I cannot tell you as regards the date, whether it was before or after or about the time. Does that answer your question?

811 Q. About the time of what?
A. About the time you referred to; you referred to a time.

(Mr. Totten enters a general objection to all the foregoing testimony and any testimony on this subject, because it is entirely outside of the issue in this case.)

Q. Is this title held against Mercy Maria Gray?

(Question objected to by Mr. Totten, as the records will show.)

A. I decline to answer the question.
Q. Has the deed ever been recorded?

(Question objected to by Mr. Totten, because the records will show.)

A. I decline to answer.
Q. If the deed has not been recorded, will you state why not?
A. I decline to answer any questions on that subject.
Q. Is the title of that property now held for the benefit of your assignees?
A. I decline to answer any question in regard to it.
Q. Who advanced the money to pay for the deed?
A. (To the examiner.) Note the same answer.
Q. How much was paid for it?
A. (To the examiner.) Note the same answer.
Q. Why do you object to answer?

812 (Mr. Totten objects to all questions on this subject as immaterial and irrelevant.)

A. It is none of your business, Mr. Hanna, and none of the business of your client; that is all there is to it.
Q. Don't you think that it is his business to know his rights?

(Question objected to by Mr. Totten as immaterial and irrelevant.)

A. Well, he is endeavoring to maintain them.
Q. Do you know who examined the title of the property embraced in your deeds of trust given to secure Mr. Pepper?
A. I do not.
Q. Is it not a fact that Mr. Ashford in the first instance made that examination?
A. I do not know.
Q. Is it not a fact that he reported the title defective as to said rear part?
A. I do not know.
Q. Did you know that he was subsequently directed to prepare the title for the part by metes and bounds by somebody from Kilbourn & Latta's office?
A. I did not.
Q. You had no knowledge on this subject?
A. None whatever.

813 Q. Mr. Shepherd, was it not simply for delay that you requested Mr. Bradley not to act as trustee in the first deed of trust?

A. I do not know that I requested Mr. Bradley not to act.

Mr. BRADLEY (to Mr. Hanna): Have you any evidence of anything on that point?

Mr. HANNA (to witness): Well, did you request him not to act?

A. I did not.

Q. Was the bill in this cause not filed for the purpose of delaying Mr. Pepper in realizing his debt?

A. The bill in this cause was filed to prevent a robbery. I hope that answer is satisfactory and to the point.

Q. Do you mean to say that Mr. Pepper was endeavoring to collect more than his due?

A. I mean to say that that sale was a fraud and a robbery—that attempted sale.

By Mr. WILSON:

Q. Mr. Shepherd——

Mr. TOTTEN (to Mr. Wilson, interposing): Whom do you appear for?

Mr. WILSON: For the defendants.

Mr. TOTTEN. Do you and Mr. Hanna represent*ing* the same parties?

Mr. WILSON: We do.

Mr. TOTTEN: Then I object to your examining the witness.

814 Mr. WILSON (to the witness): Governor, you opposed the execution of these deeds of trust by Pepper to collect his money, have you not?

The WITNESS (to his counsel): Mr. Totten, I wish to know whether I am obliged to answer two catechisms to the same question?

Mr. TOTTEN: I do not think you are. If Mr. Hanna will ask proper questions I advise their being answered; but I do not think you are required to go through two examinations.

Mr. WILSON (to the examiner): Well, what do you say about it?

The EXAMINER: I shall certify the matter to the court if the witness shall decline to answer the question.

The WITNESS: I decline to answer the question under the advice of my counsel.

Mr. JOHNSTON: I appear here simply in my own interest as trustee, and desire to ask one or two questions relating to that branch of the case only.

Mr. TOTTEN: Do you appear as counsel for yourself?

Mr. JOHNSTON: Exactly.

Mr. TOTTEN: Don't you appear by counsel also?

Mr. JOHNSTON: I do not know that I do. I do not remember whether anybody signed my answer as counsel or not; but

815 whether they did or not, I simply propose to ask one or two questions in regard to that branch of the case—simply to the relation of the trustees and of myself as trustee.

By Mr. JOHNSTON:

Q. Dou you mean to say, Governer, that the trustees have taken any unfair advantage of you in any way? Do you say that the

trustees who made the sale under the deed of trust have taken any unfair advantage of you?

A. I do.

Q. Well, will you state in what respect?

A. Well, simply that I have understood from Mr. Mattingly and Mr. Bradley that the decree of the court was not intended to allow this sale, and an attempt has been made to carry and force it through regardless of my rights. That is my understanding from Mr. Bradley and from Mr. Mattingly.

Q. Do you think that the trustees have acted unfairly to you in any other respect than misconceiving their powers under the decree?

A. Well, now, Mr. Johnston, suppose you *will* explain exactly what you want to get at, so that I can understand it.

816 Q. I mean to say, do you think that the trustees took any advantage of you in any respect, or did anything improper occur at the time that the sale was made?

A. I do.

Q. Will you please specify any act that you complain of on the part of the trustees?

A. I say that the sale of that property to Mr. Pepper for the sum named—whatever the sum was, $55,000—was a gross wrong to me.

Q. Is there any other objection that you have to the act of the trustees?

A. That is all; that is the only one.

Q. Do you mean by that to say that the trustees ought to have declined to sell?

A. I do absolutely.

Q. At what figure do you think the trustees were at liberty to let the property go?

A. I do not think the property should have been sold under $100,000 at a forced sale.

Q. Do you think the trustees should have withdrawn that property unless that sum had been reached?

A. I do not think they should have withdrawn the property.

Q. Have you any further answer to my question as to the acts of the trustees than these, or any further objection to any step that they have taken in the case than those you have already mentioned?

817 The WITNESS: Well, exactly what do you mean, then, Mr. Johnston?

Mr. JOHNSTON: You have stated that, in your judgment, the trustees should not have sold the property because they were not empowered so to do under the decree, and that they ought to have withdrawn the property unless $100,000 had been bid. My question is, Is there any other act of the trustees that you complain about?

A. None that occurs to me at present; none that I know of.

Mr. JOHNSTON: That is all.

Mr. HANNA: Mr. Shepherd, have you ever tendered to Mr. Pepper, or to any person for him, or offered to pay the indebtedness referred to in the case to secure Mr. Pepper?

(Question objected to by Mr. Totten as immaterial and irrelevant.)

A. I have not.

Q. Are you willing, and, if willing, are you able to pay to Mr. Pepper your indebtedness to him, if he will reconvey to you the property within any definite time?

A. I regard the sale as an improper one, and shall not treat for it pending this suit.

Q. Mr. Totten has asked you whether you knew that the
818 property referred to by the house was not all included in the trust. From whom did you learn that fact?

A. I have before said that I cannot awswer that question from want of recollection.

Q. You were asked "when," but not "from whom."

A. I make the same answer in regard to your question. My recollection does not serve me on that point.

Q. Is the title to that rear lot in any way under your control?

(Question objected to by Mr. Totton as irrelevant.)

A. I decline to answer that question. It is none of the defendants' business any more than what underclothes I have got on.

Q. Is not the fact of the omission of the rear part of the property in the deed of trust given to secure Mr. Pepper an injury to him?

A. Well, that is a matter of opinion, that you are as well qualified to pass upon as I am.

Q. Well, what is your opinion?

A. Well, I do not know that I have any.

Q. If it was your intention to include that lot in the trust to him and it was by accident omitted, and if that fact impairs his security, as you say it would injure the sale, is it not his business to know who has the title?

819 (Question objected to by Mr. Totten as immaterial and as being an improper question to ask this witness; it is a question for the court to decide whether it is material or immaterial.)

A. When Mr. Pepper does justice and undoes the wrong he has done he will be entitled to respect and consideration at my hands; not until then.

Q. Did Mr. Pepper not wait a long time before he undertook any proceedings under these trusts, by way of indulgence to you?

(Question objected to by Mr. Totten.)

A. A "long" time is a comparative term. I do not think he did with the security before him.

Q. Do you decline to give to Mr. Pepper or his counsel any information as to the condition of the title to that rear lot at the present time?

A. I do, emphatically.

Q. You do not regard it your duty to give him that information?

A. I do not, or my pleasure.

Q. In pursuance of your original intention as to the security which you intended to give and which he expected to get?

820 A. All original intentions have been wiped out by the present states of affairs.

Q. Did you have the same feelings towards Mr. Pepper when you pleaded usury in the other suit?

(Question objected to by Mr. Totten as impertinent.)

A. Well, I decline to answer it on the same ground.

Q. In reply to a question of Mr. Totten you made some statement as to the title of the heirs of Arnold Harris. What was that?

A. The record shows the statement I made to Mr. Totten. The examiner will read it to you, I guess.

Q. What did I understand you to say?

A. I said that the record will show, and that the examiner will read it to you if you wish.

Q. Well, I ask you now.

A. Well, I won't undertake to answer it when it is there (referring to the examiner's notes).

Q. Have you had, directly or indirectly, any negotiations with the heirs of Arnold Harris as to the title to the rear lot in question? And, if so, state what those negotiations were, with whom
821 those negotiations have been conducted, and when they were conducted?

(Question objected to by Mr. Totten as irrelevant and immaterial).

The WITNESS (to the examiner): And put as the answer that I have answered all that I propose to in connection with that subject.

Q. Do you decline to answer?

A. My answer is there (referring to the notes of the examiner).

(The examiner is here requested by Mr. Hanna to certify this matter to the court, with which request the examiner complies).

Redirect examination by Mr. TOTTEN:

Q. Mr. Shepherd, referring to this general deed of trust which you spoke of to secure your creditors, secured and unsecured, is there any other property in addition to this house included in that trust? And, if there is, state generally the value of it and the quantity.

A. There was a very large quantity of property appraised at its cost value, amounting in the aggregate to a million and a half of dollars, comprising large quantities of real estate, encumbered
822 and unencumbered, and some personal property, which was conveyed under deed of trust of November 15th, 1876, and a considerable portion of which still remains undisposed of. Does that answer your question?

Mr. TOTTEN: Yes, sir; that is right.

ALEX. R. SHEPHERD.

Subscribed and sworn to before me this 27th day of April, 1880.

EDMUND A. BAILEY, *Examiner.*

Adjourned until Saturday, April 17th, 1880, at 2 o'clock p. m.

EDMUND A. BAILEY, *Examiner.*

WASHINGTON, D. C., SATURDAY, *April* 17, 1880.

Met pursuant to adjournment.

Present: Messrs. Totten, Wilson, Johnston, and Hanna.

No witnesses appearing, adjourned to Tuesday, April 20th, 1880, at two o'clock p. m.

EDMUND A. BAILEY, *Examiner.*

823 WASHINGTON, D. C., TUESDAY, *April 20th*, 1880.

Examination postponed to Friday, April 23d, 1880, at two o'clock p. m.

EDMUND A. BAILEY, *Examiner.*

WASHINGTON, D. C., FRIDAY, *April 23d*, 1880.

Examination further postponed to Saturday, April 24th, 1880, at two o'clock p. m.

EDMUND A. BAILEY, *Examiner.*

WASHINGTON, D. C., SATURDAY, *April 24th*, 1880.

Met pursuant to postponement.

Present: Mr. Totten, counsel for complainant; Messrs. Wilson and Hanna, counsel for the defendants; Mr. Johnston *in propria persona*, as trustee, and Mr. Bradley.

ANDREW C. BRADLEY produced and sworn on behalf of the complainant.

By Mr. TOTTEN:

Q. What is your business, Mr. Bradley?

824 A. Lawyer.

Q. Do you know the parties to this suit—Pepper and Johnston and Philip?

A. I know all the parties except Mr. Pepper.

Q. Are you related in any way to Mr. Shepherd?

A. I am not related to him in any way; my wife and his wife are sisters; that is the only connection.

Q. Did you have anything to do with the case of Pepper against Shepherd in our equity court, numbered 6201?

A. I had nothing whatever to do with that case except to file an answer to it. I took no further notice of it until after the decree had been rendered, which was in May, 1879.

Q. It appears by the records in that case that on the 25th July, 1879, a motion was made to dissolve a restraining order made a day or two before that in that case, and that an order was made on the 26th July, 1879, modifying the restraining order by Mr. Justice MacArthur, holding the special term. Do you remember the circumstances of all that? And, if you do, state what you know about it.

(Question objected to by Mr. Hanna.)

A. I was about to state in answer to the preceding question that subsequent to the rendering of the decree in that case, some
825 time in the latter part of June, Governor Shepherd was about to leave for Mexico, and he left me a power of attorney and authorized and requested me to give my best attention to his matters whilst he was absent. He left about that time and went to Mexico, and after he left the property described and involved in the proceedings in this cause and in the case just referred to was advertised for sale by William H. Philip and James M. Johnston, as trustees; and then, as attorney-in-fact for Mr. Shepherd, I signed a petition, which was filed in this cause—No. 6201, equity—asking for an injunction restraining that sale. The petition was filed on the 24th day of July, I believe, and the restraining order was issued and the hearing of the motion for injunction fixed for the 2nd day of September following. On the 25th day of July, as the docket shows, there was a motion filed to dissolve the restraining order, of which I was notified, I believe, although I was not attorney or counsel in the case, and the hearing on this motion to dissolve was had the next day, on the 26th. I was present when the motion was called. When first called I believe that Mr. Totten was not there, and Mr. Johnston and I both stated that we did not desire to have the case heard, as he stated, in the absence of Mr.
826 Wilson and, as I stated, in the absence of Mr. Totten. A few moments afterwards the motion was again called and Mr. Totten was then there, and the court's attention was called to the case, and it was partially discussed, I believe, Mr. Johnston objecting that Mr. Wilson was not there, but the court postponed the hearing of that motion until the second day of September, to be heard with the motion for an injunction.

(Mr. Wilson and Mr. Hanna interpose an objection to the foregoing testimony of the witness.)

WITNESS (continuing): Some little while subsequent to that disposition of the motion I saw Mr. Nathaniel Wilson and Mr. James M. Johnston in the bar association room, and was informed by them that the court had granted them an order and that they were then preparing the order. I noticed that Mr. Johnston had a paper which seemed to be written and rewritten and scratched, and afterwards I was in court and was shown the order (which is now filed among the papers in the case as passed on the 26th day of July) by Mr. Wilson, and I read it over and informed him that I could not consent to the court signing that order; that I would go over for Mr. Totten and ask him to come in and state his objection to it.
827 I went out for the purpose of seeing Mr. Totten and did see him. Subsequently I returned and found that the order had been signed. I could not find the order either in the clerk's office or with the clerk of the court in court, but I informed Justice MacArthur of its contents——

(Messrs. Wilson and Hanna interpose a general objection to all testimony on this subject.)

WITNESS (continuing): And stated to him its peculiar character, and that it seemed to me to have been carefully drawn for the purpose of disposing of the substance of the petition which had been filed and upon which the restraining order had been issued, and Justice MacArthur said that——

(Objection interposed by Messrs. Johnston, Wilson, and Hanna.)

WITNESS (continuing): The only purpose which he had in signing the order and the only possible purpose which the order itself could effect was the mere permission to continue the advertisement until the 9th of September, as I recollect. I was subsequently present, on the 6th day of September, when the application for injunction was heard upon this petition before Justice MacArthur, and Justice MacArthur's attention was called to the peculiar character of this order of the 26th July by Colonel Totten, and, as I rec-
828 ollect it, Colonel Totten asked that this matter be stricken out of the order; and Justice MacArthur then remarked——

(Objected to by Messrs. Wilson, Hanna, and Johnston.)

WITNESS (continuing): That he had informed me at the time the order was passed that his intention in signing it was to permit the continuance of the advertisement only, and that it could not have any other possible effect; and Mr. Nathaniel Wilson, as I recollect, responded that of course it could possibly have no other force or effect, and he disclaimed having any other purpose in obtaining the order. Justice MacArthur heard the case at that time and refused the injunction solely upon the ground——

(Objected to by Mr. Hanna.)

WITNESS (continuing): As he stated it at that time, that there was an appeal pending to the general term, and that he had no jurisdiction in the matter; and at first he declined to sign the order refusing the injunction for the same reason, but afterwards he did sign it.

Q. Were you present in October last, on the occasion when Mr. Johnston and Mr. Philip undertook to make a sale of the property mentioned in these proceedings?

A. I was.

829 Q. Will you state what occurred—all the circumstances, the number of people there, and who bid the property in, and how many bids there were, and who made the bids?

A. Mr. William H. Philip and Mr. James M. Johnston, the trustees, were present; Mr. John F. Hanna, Mr. Olmstead, Mr. Totten, Mr. Osceola Green, Dr. Harvey Lindsly——

Q. And the usual number of darkeys?

A. And a good many boys, and one or two respectable-looking gentlemen whom I do not recollect now—Colonel Bliss and other gentlemen. The trustees announced that the property would be sold subject to taxes, which they stated amounted to about $2,700, I think, and a plat was also exhibited (showing the ground plan of the property, I think), and the statement was made that the lot sold included the front portion of the house and a part of the picture gal-

lery; that the rear line cut off a portion of the picture gallery. The first bid made was by Mr. John F. Hanna—$40,000, I think. The second bid was by Mr. William H. Philip, one of the trustees—$45,000; and the third and last bid, upon which the property was knocked down, was by Mr. John F. Hanna; and when the property was knocked down it was announced that it was sold to Mr.
830 George S. Pepper for $50,000, subject to taxes.

Q. Was Mr. Hanna, the gentleman who made the bid there, the same Mr. Hanna who is counsel in this cause, and who was also counsel in the preceding cause?

A. Yes, sir.

Q. Was Mr. James M. Johnston, who was one of the trustees, the counsel for Mr. Pepper in the preceding case?

A. He was.

Q. Do you know whether Philip was Mr. Pepper's counsel or not?

A. I do not know. I think Mr. Philip informed me that he had been some time before that. I am not sure about that, though.

(Above answer objected to by Mr. Wilson.)

Q. Was there any statement made by the auctioneer in reference to the fact that the ground included in the terms of this deed of trust did not include all the ground covered by the buildings?

A. Oh, yes; that statement was made and the plat was exhibited which is attached to the depositions taken in this cause, No. 6201. The papers were there——

Q. The case of Pepper against Shepherd?

A. Yes, sir.

Q. Were the papers there also?

831 A. I do not know how many of them were there, but I think a number of the depositions which were secured together were there, and this plat is a part of them. That is my recollection.

Q. Are you acquainted with the property in question?

A. I am somewhat.

Q. What is the character of the building, so far as you know?

Mr. Wilson: Oh, we admit that it is good.

By Mr. Totten:

Q. Is it an ordinary building or an extraordinary one?

A. Well, it is the handsomest building inside and the most conveniently arranged dwelling that I ever have seen. The outside, as Governor Shepherd states, the exterior walls, K-St. front and Connecticut-avenue side, are white sandstone, I think, or gray sandstone. The first story—basement story—had a large and well-appointed billiard-room on one side and several rooms back of it, including servants' sleeping-rooms, I believe, and on the other side of the hall and the front was a very conveniently arranged office, with water-closet and stationery washstands, &c., adjoining in a small room.

831½ Q. Have you made any estimate or thought about the question as to how much that property was worth on the day of the sale?

(Objected to by Mr. Wilson because no foundation has been laid for the question.)

A. I know very little about the cost of building or the cost of materials, and I only know as to the probable value of that property from comparison of it with other real estate. I do not know any dwelling in the city of Washington that compares with it in interior finish and convenience of arrangement in every respect.

Q. What was it worth on the day of the sale?

A. Well, really, I do not know.

Q. What do you think?

A. Well, I think that if Hallet Kilbourn's house sold for between $60,000 and $70,000, as I understand it did, this house was worth over $100,000.

Q. Is there any difference between the value of that property on the day of sale and its value now?

A. Real estate, as I understand it, has appreciated somewhat since then. I do not know that it has appreciated any in that locality, but it was almost impossible at that time to make sale of real estate.

Q. How long have you been practicing law here?

832 A. Twelve years, I believe.

Q. During that period have you made any sales of real estate?

A. A good many.

Q. Well, can't you give me a direct answer to my question as to the value of that property on the day of the sale?

A. As I have stated, from all the sources of information that I possess, I think that the house was worth over $100,000; I should say between $100,000 and $125,000. I think it ought to have brought $1,000,000.00 at a forced sale.

Q. What effect would the fact that the house covered more ground than the deed of trust included have upon a public sale of that kind, in your judgment? I mean, now, what effect would that have upon the mind of any body who wanted to buy that house?

A. Well, it would prevent any one from bidding upon it, even if otherwise they might desire it.

(Question and answer objected to by Mr. Wilson.)

Q. In your judgment as a man who has made sales of property in this District and as a lawyer, was it not an impossibility

833 to sell that property at public sale in that condition?

A. I should think so.

Q. Was it possible, in your judgment, to make a fair sale of any property under any such embarrassing circumstances?

A. I think not.

Q. As a matter of fact, were there any competing bidders at that sale or any competition bids?

A. There were not.

Q. You are sure about that, are you not?

A. I am. I heard all the bids made, and there were none made except those three.

Q. Two by Mr. Hanna, the attorney for Mr. Pepper, and one by one of the trustees in that deed of trust?

A. Yes; two by Mr. Hanna and one by Mr. William H. Philip.

Q. Philip was the same man who was acting as trustee in the sale, was he not?

A. Yes, sir; he did not explain his bid in any way; he made the bid as an ordinary bid and in the ordinary way.

834 Cross-examination by Mr. HANNA:

Q. Mr. Bradley, I understand you to say that you were present at the sale?

A. I was.

Q. Was not that sale fairly conducted?

A. Well, I don't know any other indications of unfairness except those mentioned, and those are abstract questions, I suppose.

Q. Was there any improper conduct on the part of the trustees or by me at the sale?

A. The trustees, both, and you, I believe, conducted themselves in a very quiet and orderly manner and like gentlemen.

Q. Was not the property regularly cried?

A. It was cried by Mr. Tom Dowling, a regular auctioneer.

Q. Was not a fair and every opportunity given for bidding?

A. So far as crying the bids were concerned, I suppose there was. No one was prevented from bidding except by the circumstances of the sale.

Q. The property had been fully advertised, had it not?

835 A. Well, I should say so. I believe the advertisement had been in every day, and it was extraordinarily advertised in that respect.

Q. Were persons deterred from bidding in any way, actually?

A. I think they were by the fact—I do not know but that it is hearsay, but I heard of one person who would have bid, but he was advised that he would get no title under such a sale.

(Answer objected to by Messrs. Wilson, Hanna and Johnston.)

By Mr. TOTTEN:

Q. Well, you started out to say that you thought they were, and then stopped.

A. I think they were by the fact that this plat was exhibited there and the statement made that the property would not include the whole house.

By Mr. HANNA:

Q. The statement in relation to that fact?

A. Yes, sir.

Q. The fact of the description of the ground?

A. Yes, sir; and I think persons also would be deterred because,

being advised that this sale was made under certain orders of the equity court, they would be put upon notice to examine the proceedings in this case and would ascertain the fact that there
836 was a good deal of doubt whether Mr. Johnston had any authority to act and make that sale. That is one person I heard of.

Q. I asked you in relation to our actual conduct at the sale. Was there any actual deterring of bidders?

A. Certainly not.

Q. Was it not the duty of the trustees to inform or advise the bidders as to the description of the property referred to in the deed of trust?

A. Well, I do not know as that is a question I would be obliged to answer as a witness.

Q. Is it not the duty of the trustees in all cases to advise the bidders?

The WITNESS: Of what?

Mr. HANNA: Of the description of the property embraced in the deed of trust?

A. Of course the trustees could not sell any property except what is embraced in the description in the deed of trust under which they sell.

Q. Was not the fact of this announcement more to Mr. Pepper's disadvantage or as much to his disadvantage?

A. No; I think not. It gave Mr. Pepper an opportunity to buy the property when nobody else would.

Q. Are you not aware of the fact that Mr. Pepper did not want to buy the property?

837 A. I cannot. I never had any conversation with Mr. Pepper in my life.

Q. Would you not, as a trustee offering property under a deed of trust, in which there was an error in the description, feel it to be your duty not to mislead bidders by concealing the fact of such an error?

A. If I advertised property for sale as trustee upon an erroneous description of the property I should, of course, feel obliged to abide by that description, but I do not think that as trustee I should do that. I should have the improper description corrected before I attempted to make sale of the property, knowing that the erroneous description would militate against a sale.

Q. Is it not the custom when the deed of trust omits the clause to pay taxes out of the proceeds of the sale, to state the amount of taxes at the sale, so that purchasers may be fairly dealt with and the trustee protected?

A. I do not know that it is. I do not know that there is any custom in regard to taxes, except that I believe the custom has been, both in chancery and in sales under deeds of trust, to sell the property free of taxes.

Q. Do you not think that the course pursued by the trustees in exhibiting the certificate of the collector of taxes showing the
838 exact amount of taxes due was an eminently proper one under such circumstances?

A. If the property was properly advertised to be sold subject to taxes, of course it was a proper and necessary act.

Q. The certificate of the collector of taxes was exhibited showing the exact amount of taxes due, was it not?

A. I do not know; my recollection is that Mr. Johnston had an estimate that he had made himself, and that he read it to the crier or auctioneer, and that the actioneer announced it, but I may be mistaken about that; he had a paper there; I do not know what it was. I did not examine it.

Q. Where you the trustee named in the deed of trust of June 1st, 1874, recorded in Liber 754, folio 51?

A. Well, I do not know, unless you identify it more fully than that. (Paper handed to witness, and after inspection of the same he continues:) Yes; I was one of the trustees.

Q. Is it not a fact that you were called upon by Mr. Pepper to sell under that deed of trust because of Mr. Shepherd's default thereof?

A. It is; and that fact appears in the proceedings in the case No. 6201.

839 Q. From whom did you learn that the deed of trust did not cover the entire improvements?

A. I learned it from Mr. Shepherd.

Q. When?

A. A day or two before I received this request from Mr. Pepper.

Q. Did Mr. Shepherd then state how the matter happened?

A. He did not; and I believe that Mr. Shepherd was only recently apprised of the fact. At that time I do not believe he knew of it or had known of it any length of time.

Q. Did Mr. Pepper's request for you to sell relate to both deeds of trust—to this deed of trust and to the subsequent one, in which you are also named as trustee?

A. The paper itself will show. I do not recollect myself. It is filed with the papers, is it not?

Mr. HANNA: No.

A. Well, I do not recollect.

Q. To which deed of trust does your refusal to sell relate? I refer you to your letter filed as an exhibit to the bill in 6201, equity (handing paper to witness).

A. (After examination of paper:) It evidently refers to the one to which Mr. Pepper's request or order related, but which that one was I do not know.

840 Q. Was it the one in which you were co-trustee with William H. Philip, or the one in which you were co-trustee with Mr. Mattingly?

A. Well, I cannot tell, as I haven't the paper here—Mr. Pepper's order. My impression is that it referred to the one in which I was co-trustee with Mr. Philip.

Q. Is there any doubt about that?

A. Well, I cannot tell, except so far as I have answered. My impression is that it was that one.

Q. Is it not a fact that there was no issue made by the pleadings

in said cause as to the second deed of trust or your refusal to sell thereunder?

A. Indeed I do not know. The papers themselves will show. I never took any interest in the case at all after I filed my answer. I did not know when it came up for hearing and did not hear it argued. I just happened to be in court when a part of the concluding argument was made, I think. Just before the decree was signed. I took no part in it.

Q. Have you the request of Mr. Pepper to sell the original order?

A. I haven't it with me. I do not know whether I have it at my office or not. It seems to me that the request was a joint request directing to Mr. Philip and to me; it was brought to me by

841 Mr. Philip. I did not receive it direct from Mr. Pepper, and it was on that occasion that I got the idea that Mr. Philip was acting as counsel for Mr. Pepper, from my interview with him at that time, and suppose that Mr. Philip has that order.

Q. Mr. Bradley, was not the omission to insert the designation of the liber and folio in the decree passed May 12th, 1879, substituting Mr. Johnston in your place as trustee in said cause, a mere clerical error, committed in the mere haste of the preparation of the decree?

A. Indeed I don't know. I had nothing in the world to do with it.

Q. You did not notice the omission at that time?

A. No; I did not. I had nothing in the world to do with the decree; did not examine it, as I recollect, and I do not think that I saw it until about the time that the petition for an injunction was filed.

Q. Do you contend that the liber and folio omitted should have been that of the second deed of trust?

A. I do not contend anything about it. I am not counsel in this case or a party.

Q. Would it have been reasonable for the court to have

842 substituted a trustee in your place in a deed of trust under which there had been no refusal on your part to act?

A. My recollection of the bill that was filed is that it prays that a trustee be substituted in the place and stead of the trustees in both deeds of trust, substituting one trustee for the trustees in both deeds of trust, with directions to sell the property under both.

Q. Don't you also recollect the fact that there was no issue made as to the substitution under the second deed of trust?

A. I had nothing whatever to do with the case except to file my answer, as I stated. I do not know what the issues were at all, except what I could find out from reading the papers. My testimony was not taken, and I did not attend any examinations of witnesses in the case; did not know anything about it.

Q. You prepared, I believe, the petition filed in that cause July 24th, 1879?

A. I signed it and it may be in my handwriting; if so, it was done at Colonel Totten's request, who was very busy at the time.

Q. Was not this clerical error discovered for the first time when that petition was being prepared?

843 A. I do not remember. It was only a sudden emergency, the absence of Mr. Shepherd from the city and the necessity for my acting for him, that caused me to have anything to do with this matter.

By Mr. WILSON:

Q. When the restraining order was given by Judge MacArthur of which you have spoken I was not present, was I?

A. I did not procure it. Colonel Totten procured it, and I do not think I was there.

Q. Were you not present there?

A. I think not; I am very sure I was not. I had nothing to do with getting it.

Q. You prepared the petition?

A. Only so far as I have stated just now.

Q. Well, you did not prepare the petition?

A. I think it is in my handwriting, but it was done, as I have stated, at Colonel Totten's request, who was very busy at the time and asked me to write it; but I was not solicitor or counsel in the matter. I only signed it as attorney-in-fact of Mr. Shepherd.

Q. When you were shown the order that was being prepared by Mr. Johnston and Mr. Wilson did you not say that you were not counsel in the case, and did you not thereupon and before
844 the order was signed by Judge MacArthur notify Colonel Totten that the order was about to be applied for?

A. I think I stated to you that I could not consent to the signing of such an order; that I would have to see Colonel Totten and send him over to make his objection to it, and I came over to Colonel Totten's office and found him engaged with some one and stated the circumstances to him, and when I returned to the city hall the order had been signed. I do not know how soon it was signed after I left, but you were waiting, with the order in your possession, for an opportunity to have the court sign it when I left you there.

Q. Did you notify Colonel Totten of the substance of the order?

A. I do not recollect. I think it is probable that I did. I certainly told him that it ought not to be signed.

Q. Did he decline to appear before Judge MacArthur in reference to the order?

A. Not to me. I thought he was going over, and left him under that impression.

Q. Do you know that before your interview with Colonel Totten he had been notified by Mr. Johnston that the order was about to be applied for?

A. I do not; I heard so. I do not know anything about
845 it. Perhaps Mr. Johnston told me so. I do not think I hea-d it from any one except Mr. Johnston himself.

Q. Did Colonel Totten state to you whether he would or would not appear before Judge MacArthur in reference to that order?

A. As I stated, I left Colonel Totten with the impression that he was coming over to make his objections, and I went down to the District Commissioners' office on a matter of business of my own,

and when I returned to the city hall a few moments afterwards (I was only gone a short time) I found the order had been signed.

Mr. TOTTEN: And the court had adjourned?

A. Yes; the court had adjourned, and there was no one sitting there but Judge MacArthur.

By Mr. WILSON:

Q. You were present when Judge MacArthur signed the order directing the sale to go over until September, upon the hearing of a motion to dissolve the restraining order on your petition?

A. No; I was not. That is the order of July 26th. I was not present then. I was present at the time when Mr. Wilson was not in court, when, as I have stated in my direct examination, the motion was partially heard, or Colonel Totten was heard on one
846 side and Mr. Johnston on the other, and the court stated that the hearing of that motion would go over until September 2nd, and be heard with the motion for injunction.

Q. That is the occasion I am talking about. Now, didn't Mr. Johnston say that he felt a delicacy about arguing the case, as he was trustee, and did he not decline to argue, and did he not ask the court to wait until I came in?

A. That is my recollection, that he did; and that the court stated that he would pass it over anyhow until the 2nd of September.

Q. And did you not say that you were not counsel, and did you not decline to argue?

A. As I stated, the motion was called twice. When it was first called Mr. Johnston responded that you were not there, and that he did not want to argue it, and I stated that Colonel Totten was not there, and I was not counsel and did not want to argue it; and it was then passed, and the court went through the list of motions, and then it was called a second time and Colonel Totten was present, and I believe Mr. Johnston reitterated his statement that he did not want to argue it, and then the court, upon the partial hear-
847 ing—I do not remember what was said upon both sides—stated that the hearing of the motion would be continued until the 2nd of September.

Q. Did not Mr. Johnston ask the court to delay its action until I came?

A. I think he did.

Q. And did he not object to the signing of any order in my absence?

A. I do not know about that. I do not remember that any order was drawn.

Q. Then the proceedings were as follows: Your petition was filed for injunction on the 24th July and a restraining order was issued, returnable on the 2nd of September, 1879, was it not?

A. Yes, sir.

Q. And that application by you and the granting of that order was *ex parte?*

A. I suppose so, of course. As I have stated, I was not present. Colonel Totten acted as counsel and procured it.

Q. Then on the 25th the motion to dissolve was filed and motion was given for a hearing the next day?

A. The docket entries will show; that is my recollection.

Q. On the next day, when the motion came up for hearing, the statements were made by you and Mr. Johnston to which you have testified?

848 Q. Yes, sir.

Q. And thereupon the court said that the motion should go over until September?

A. Yes, sir; and Colonel Totten left the court-room.

Q. And Colonel Totten left the court-room?

A. Yes, sir; and so did I.

Q. Do you know whether any order was formally made by the court continuing the injunction?

The WITNESS: Do you mean postponing the hearing of your motion to modify the injunction?

Mr. WILSON: Yes, sir.

A. I do not know what entry was made on the minutes or whether any entry was made. There was no formal order prepared by counsel; that is my recollection.

Q. You read the order that was passed on the 26th July modifying the injunction, before it was signed, did you not?

A. I did.

Q. You made on that day no objection to the same to the judge then holding the court, did you?

A. I was not counsel in the case and not acting in any way, as I have stated, except that I signed the petition, and I did not appear in the case at all.

849 Q. Well, that does not answer the question. I merely asked you as to whether you objected as a matter of fact?

A. As I have stated, I informed you that I would see Colonel Totten and get him to come over and to object to the order. After the order was signed I found that it had been signed, upon making enquiry, and I then stated to the court——

Q. The same day?

A. The same day.

Mr. TOTTEN: To the court or to the judge?

A. To Judge MacArthur sitting there. I think he had adjourned, but was still sitting on the bench. I stated to him that this order had been passed, and that it was improper in its form, and that he ought not to have signed it, I thought, in that form. He stated that Mr. Wilson informed him that he had shown the order to me, and that it was all right, or that I had said that it was all right. I told him that that was a mistake.

By Mr. WILSON:

Q. Do you mean to say that Judge MacArthur said that I stated to him that I had shown the order to you and that you consented to it?

850 A. That is what I understood at the time from him. That may have been a mere inference of mine from what he said; but, as I recollect, he stated that Mr Wilson said that he had shown it to Mr. Bradley and that it was all right—either that I had said that it was all right or that it was all right—I do not remember which.

Q. Did you know at that time that, after Colonel Totten was notified that the order would be applied for, the court was distinctly advised that Colonel Totten declined to attend?

A. I did not. I was not present at all. I was not there when the order was signed or when the court granted the order which was prepared, or granted an order; and I was not there, as I have stated, until after the order had been signed.

Q. What time was it that the action was taken by the judge postponing the hearing until September?

A. I don't recollect. I think there were only a few motions called that morning, and perhaps it was early after the opening of the session of the court.

Q. What time was it when you called on Colonel Totten to procure his attendance before the judge in reference to the motion?

A. Well, it was some time later than that. I do not recollect. Colonel Totten, I know, was very busy; stated that he expected to go away that night, and was getting ready for that purpose.

851 Q. Who prepared the bill in this case?

A. I think Colonel Totten did.

Q. You did not?

A. I certainly did not; it is not in my handwriting.

Mr. TOTTEN: I think I drafted it and you copied it, did you not?

A. No. I think I made a draft of it and it was modified and copied in your office.

A. C. BRADLEY.

Subscribed and sworn to before me this 26th day of April, 1880.

EDMUND A. BAILEY, *Examiner.*

It is hereby stipulated and agreed by counsel that the entire record and proceedings in the equity suit of Pepper *v.* Shepherd and others, being equity cause No. 6201, may be referred to and considered as a part of this cause on hearing with the same force and effect as if they had been specially introduced as evidence, and that the testimony therein taken may be read as if taken as testimony in this cause.

The complainant here rests his case.

Adjourned.

EDMUND A. BAILEY, *Examiner.*

852 DISTRICT OF COLUMBIA, }
County of Washington, } *ss:*

I, Edmund A. Bailey, examiner in chancery, do hereby certify that in pursuance of notice the foregoing depositions were taken down in short-hand from the statements of the witnesses at the time

and place designated in the caption thereof, reduced to writing and read over to the witnesses, and by them subscribed in my presence, the said witnesses having been by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth touching the matter at issue in said cause.

I further certify that I am not of counsel for any of the parties to said cause or in any manner interested therein.

EDMUND A. BAILEY,
Examiner in Chancery.

End.

853 SHEPHERD *vs.* PEPPER. } In Equity. No. 7052.

THOMAS DOWLING, being first duly sworn, says that he is an auctioneer, and has been engaged in that business for twenty years past, in the District of Columbia, and have had large experience in the sale of real estate in the said District, both at public and private sale, during that time, and am familiar with its values.

I made sale of the premises known as the residence of Governor Shepherd, situated on the northeast corner of Connecticut avenue and K streets northwest, in the city of Washington, as auctioneer, on Thursday, October 23, 1879, pursuant to the terms of the printed advertisement of the sale, which was read at the sale *sale*. I cried the sale in person about the usual time. I can't say exactly how long it was; probably fifteen or twenty minutes. There was a fair attendance present; not as many as at some sales I have made. The day was good, and I made the best efforts to sell the property at the highest price. The property brought fifty thousand (50,000)
854 dollars, subject to taxes—that is, the purchaser was to pay said sum and assume the payment of the taxes in addition thereto. The amount of the taxes was announced at the sale. A plat of the property, showing the ground covered by the description in the deed of trust, was exhibited at the sale.

I think the price obtained was a fair price for the property under the circumstances; of [if] the entire property had been sold, I think it would have brought five or six thousand dollars in addition to the fifty thousand dollars; I don't know that it would have brought more. What I mean is that I think it made that much more.

Mr. John F. Hanna, solicitor for the defendant Pepper, having examined the witness as above on behalf of said Pepper, the witness is cross-examined by Mr. Totten, solicitor for complainant, as follows:

Q. It is a fact in this case that the property covered by Pepper's trust under which you attempted to sell includes only a part of the tract of ground upon which the dwelling-house is actually built. What effect would that fact ordinarily have upon a purchaser who wanted to buy the house and ground covered by it.

855 (Question objected to by Mr. Hanna.)

A. It would certainly make a difference. It would make a better sale of the property — was all sold together.

Q. Would not such a circumstance make it impossible to effect a reasonable sale of the property?

(Question objected to by Mr. Hanna.)

A. I think the property sold as a whole would sell better. I do not think it would effect making a reasonable sale; at the same time the property sold as a whole would bring more money.

Q. If the purchaser gets possession of the part you sold him, leaving the rear of the building in possession of somebody else, won't the value of the building be practically destroyed for the purposes of a dwelling-house?

(Question objected to by Mr. Hanna.)

A. No; it will not be destroyed for a dwelling-house, but it will not be so good for a dwelling as if the whole property went with it.

Q. Is it fair treatment of a debtor, in your judgment, to *see* his dwelling piece-meal?

(Question objected to by Mr. Hanna as irrelevant and because it implies unfair treatment by Mr. Pepper, who alone has a right to complain.)

856 (The question is withdrawn.)

Q. Were you ever inside of that house, and do you know the quality of the material in and the character of the workmanship upon it?

A. I never was inside of the house, but understand it to be very fine.

Q. Assuming it to be very fine, do you say its intrinsic value did not exceed 50,000 dollars?

A. Under the circumstances and at the time of the sale I still think it brought a fair price.

Q. What is the intrinsic value of the property sold at this date?

A. I can't tell.

Q. Is the property not worth to-day at least one hundred thousand dollars?

A. I do not think it is. I doubt very much whether to-day it would bring any more money than it did at the sale.

Q. Does the fact that a chancery suit is pending in regard to a piece of property have any effect upon a *date* under a deed of trust?

(Question objected to by Mr. Hanna.)

A. In all cases where property is sold parties suppose they are buying a perfect title, and in that case it would not make no difference.

857 Q. How many bidders did you have at this sale? And state their names.

A. There were three bids made, and they were made by two parties—Mr. Hanna and Wm. H. Philip.

THOMAS DOWLING.

Cross-examination closed.

It is stipulated, because of the absence of *the* Bailey, examiner, the above deposition, taken before Hugh T. Taggart, justice of the peace, may be read at the hearing as part of the testimony.

ENOCH TOTTEN, *For Compl't.*
JOHN F. HANNA, *For Def'd'ts.*

858 In the Supreme Court of the District of Columbia.

ALEX. R. SHEPHERD
vs.
WM. H. PHILIP *et al.* } Equity No. 7052.

DISTRICT OF COLUMBIA,
County of Washington, } *ss:*

Be it remembered that at an examination of witnesses begun and held on the 28th day of April, 1880, and continued from time to time until the 28th day of June, 1880, when the within depositions were taken, I, Edmund A. Bailey, an examiner in chancery, did cause to be personally present before me, in the city of Washington, D. C., the within-named witnesses to testify in behalf of the parties specified in the caption of the respective depositions to be used in the above-entitled cause.

EDMUND A. BAILEY,
Examiner in Chancery.

In the Supreme Court of the District of Columbia.

ALEX. R. SHEPHERD
vs.
WILLIAM H. PHILIP *et al.* } Eq. No. 7052.

WASHINGTON, D. C., WEDNESDAY, *April 28th*, 1880.

Met pursuant to notice.

859 Present: Enoch Totten, Esq., counsel for complainant, and John F. Hanna, Esq., counsel for defendants.

THOMAS E. WAGGAMAN, a witness of lawful age, produced and sworn on behalf of the defendants.

By Mr. HANNA:

Q. State your name, residence, and occupation.

A. Thomas E. Waggaman; 519 7th St. N. W.; real-estate broker; 14 years in business.

Q. State whether or not you know the residence lately occupied by Governor Shepherd, corner of Connecticut avenue and K St.

A. I do.

Q. Have you ever been in the property?

A. I have been in it at an auction sale of pictures.

Q. That was the first floor?

A. First floor; and then I went in on the basement floor to see Governor Shepherd about some taxes.

Q. State whether or not you have had experience in the valuing of real estate in this city.

A. I think I have some experience in that line.

Q. You know the value of real estate generally?

A. I think I do.

Q. What, in your opinion, was the value of this property in October, 1879, at an auction sale thereof?

860 A. Well, I think for anybody buying the house for investment $50,000 would be a full price for it.

Q. Does that estimate include the house and all its appurtenances?

A. Well, no; I should not say furniture—just the house itself.

Q. Only excluding furniture?

A. Yes.

Cross-examination by Mr. TOTTEN:

Q. How much could that house be built for now, Mr. Waggaman?

A. Well, now, Mr. Totten, I haven't any idea what that house could be built for.

Q. Well, it could not be built for $50,000, could it?

A. Oh, no; certainly not.

Q. Well, what is the intrinsic value of that property for a man to buy and live in?

A. Well, that depends upon circumstances. A man who would like that location and want to get there would pay, of course, more than a party who would buy it for investment. My estimate was the value of the house as an investment.

Q. That is, for the purpose of making money.

861 A. Yes, sir; to put his money in something which will bring him a profit.

Q. Well, now, suppose the case of a man who is able to own and occupy a house like that and who has a large family to accommodate; how much would that house be worth to him?

A. Well, that depends upon circumstances altogether. If he fancied the house he would give as much, perhaps, as the house and ground cost—that is, if he wanted to live there.

Q. Your idea is that $50,000 would be the price for the purpose of speculation?

A. Purposes of investment. If a man wanted to invest $50,000 and put it in that house I would consider it a tolerably good investment—$50,000.

THO. E. WAGGAMAN.

Subscribed and sworn to before me this 29th day of June, 1880.

EDMUND A. BAILEY, *Examiner.*

MAHLON ASHFORD, a witness of lawful age, produced and sworn on behalf of the defendants.

By Mr. HANNA:

Q. State your name, residence, and occupation.

A. M. Ashford; Washington, D. C.; attorney-at-law.

Q. Do you object to stating your age?

862 A. No; I am about 49—"on or about" 46 years of age.

Q. Will you please state whether you made the abstracts of title or the examination of title of Governor Shepherd's residence for the two loans mentioned in the proceedings in 6201, equity—the first of $35,000, and the second of $10,000; the first in or about the first of June, 1874, and the second in or about March, 1875?

(Question objected to by Mr. Totten because immaterial and irrelevant.)

A. I made abstracts of Governor Shepherd's property about that date. I do not know for what purpose they were intended.

Q. At whose instance?

A. The order of Kilbourn & Latta.

Q. State what were your instructions in the first instance.

(Question objected to by Mr. Totten unless the witness received his orders from Mr. Shepherd or some one representing him.)

A. I received an order from Kilbourn & Latta to examine and report upon the title to sub-lot 2, in square 164.

Q. Is it sub-lot 2 (handing paper to witness)?

A. (After examination of paper.) Sub-lot 3. I received an order from Kilbourn & Latta to examine and furnish an abstract of the title to sub-lot 3 of Shepherd's subdivision. In the course of

863 my investigation I discovered that the rear portion of this lot, embracing lot A of a former subdivision, was defective.

Q. What did you do then?

A. I notified Kilbourn & Latta that that was the case, which is my custom always in the course of investigation.

Q. What instructions did you then receive?

A. I was then instructed to furnish and abstract of the portion that I considered good.

Q. By metes and bounds?

A. It was done by metes and bounds; the heading of the abstract, I think, will show that it says a part of the square by metes and bounds, and that, I believe, ended my connection with the transaction. My recollection is that subsequently Mr. William H. Philip brought to me a deed of trust and asked me to make a note of that on the abstract, which I did. I simply examined it enough to see what it purported to be, and made a note of it upon the abstract which I had furnished. Is there anything else you wish to ask me?

Mr. HANNA: No, sir.

The WITNESS: I would like, in justice to myself, to make a statement, though. I desire to state here in this connection that at the time I did not represent anybody in this transaction; I rep-

864. resented the records alone. I was not counsel for anybody and did not advise anybody.

Q. Did you ascertain subsequently for what purpose these abstracts were made?

A. Oh, I ascertained from mere hearsay. I simply desire to state this fact because of rumors that implicate me in this transaction as being in some way responsible for the litigation that ensued in this matter. I did not have anything at all to do with it. I simply obeyed instructions, and was not counsel or adviser of anybody at all.

Q. You obeyed the instructions of Kilbourn & Latta?

A. Yes, sir. No one connected with this case, so far as I know, have imputed to me any responsibility or carelessness in the matter.

Cross-examination by Mr. TOTTEN:

Q. You say the house of Kilbourn & Latta instructed you to make this examination. How did they instruct you, verbally or in writing?

A. Well, their habit was to send a pencil memorandum, which I always destroyed after the case was through.

Q. Don't you remember whether this was in writing or not?

865 A. No; I do not.

Q. How did you send this message that the back part of this property did not have a good title?

A. I don't remember how that was sent, but I suppose by my office boy.

Q. Did you see either Kilbourn & Latta verbally about it?

A. I don't remember that I saw either of them.

Q. How did the instructions come to you to report upon that portion of the lot which had a good title?

A. I don't remember whether it was verbal or not.

Q. Well, if it came from either Kilbourn & Latta personally you would remember it, would you not?

A. Well, it came from the same source.

Q. Was it in writing?

A. I do not remember whether it was in writing or not. Mr. Olmstead generally attended to matters personally.

Q. Well, did you see Olmstead in relation to this change in the plan?

A. I do not remember; there were a great many transactions between us at that time.

Q. Where did William H. Philip give you that deed of trust?

A. It was at the record office.

Q. And asked you to note it?

866 A. To note the record of that deed of trust.

Q. Was it recorded then?

A. It was ready to be recorded; it was at my side ready to be handed to the recorder as soon as I made the note of it on the abstract.

Q. And you noted it upon the abstract?

A. Yes, sir.

Q. Where is the abstract?

A. I do not know; the last time I saw it it was in the possession of Mr. Pepper; it was shown to me.

Q. Would you recognize the deed of trust if you were to see it now?

A. No, sir.

Q. Think you would not?

A. No, sir.

Q. You do not remember the date?

A. No.

Q. I mean the date when you made this note?

A. No; I don't remember the date independently of the abstract.

Q. Didn't you have any information from Kilbourn & Latta as to what they wanted to do with this abstract of yours?

A. I had no idea for what it was intended until the deed of trust was brought in by Mr. Philip.

Q. Who did Mr. Philip represent?

867 A. Well, I think he stated that he represented Mr. Pepper, the lender in the transaction. I do not know whether I knew anything about who was the lender at the time. I do not think I took any notice of it.

Q. Had you any connection directly or indirectly with Governor Shepherd about the making of this examination and abstract?

A. No, sir; I had not.

Q. You had not?

A. No, sir.

Q. Did you have anything with Philip except as to this deed of trust?

A. No connection with Philip except the interview I had when he brought the deed of trust.

Q. Your business was confined to Kilbourn & Latta entirely?

A. Yes, sir; up to that time I had never spoken to Governor Shepherd in my life.

Redirect examination by Mr. HANNA:

Q. Who did Kilbourn & Latta represent in the matter?

A. I don't know; because, as I stated, I did not know for what purpose the abstract was intended; I did not know whom

868 they represented or anything about it.

Q. What is the general custom with respect of the agency of real-estate agents?

(Question objected to by Mr. Totten because the witness is not a real-estate man, and it would make no difference if there was a custom.)

A. The custom is that the real-estate agent and broker generally represents the borrower.

Q. What was the custom of that house, Kilbourn & Latta, in ordering abstracts?

(Question objected to by Mr. Totten.)

A. Well, I knew that they generally represented the borrower.

Recross-examination by Mr. TOTTEN:

Q. Mr. Ashford, don't the real-estate broker represent both parties usually if he represents either? Don't he represent the lender usually more than he does the borrower?

A. I think he does sometimes.

Q. Does he not go first to the lender to find out if he has got the money?

A. Yes, sir; in a great many cases the lender comes to the broker and informs him that he has got the money.

869 Q. And that is the almost universal custom?

A. Yes, sir.

M. ASHFORD.

Subscribed and sworn to before me this 30th day of June, 1880.

EDMUND A. BAILEY, *Examiner.*

Adjourned until Thursday, February 29th, 1880, at 3 o'cl'k p. m.

EDMUND A. BAILEY, *Examiner.*

WASHINGTON, D. C., THURSDAY, *April 29th*, 1880.

Examination postponed, in consequence of the illness of Mr. Totten, to Friday, April 30th, 1880, at 2 o'clock p. m.

EDMUND A. BAILEY, *Examiner.*

WASHINGTON, D. C., FRIDAY, *April 30th*, 1880.

Examination postponed to Saturday, May 1, 1880, at 3 o'clock p. m.

EDMUND A. BAILEY, *Examiner.*

870 WASHINGTON, D. C., SATURDAY, *May 1st*, 1880.

In consequence of the inability of witnesses to attend examination, further postponed to Tuesday, May 4th, 1880, at 2 o'clock p. m.

EDMUND A. BAILEY, *Examiner.*

WASHINGTON, D. C., TUESDAY, *May 4th*, 1880.

Met pursuant to postponement.

Present: Messrs. Totten & Wilson, of counsel, and Mr. Johnston, *in propria persona*, as trustee.

WALTER B. WILLIAMS, a witness of lawful age, produced and sworn on behalf of the defendants.

By Mr. WILSON:

Q. What is your name, residence, and occupation?

A. Walter B. Williams; residence, 1219 8th St. N. W.; occupation, an auctioneer.

Q. What experience have you had in the business of buying and selling real estate in the District of Columbia?

A. Well, sir, I have sold a good deal of it in the last 12 years.

Q. As an auctioneer?

871 A. Yes, sir; as an auctioneer.

Q. How long have you been engaged in business as an auctioneer of real estate?

A. Well, I guess about 12 or 15 years, sir.

Q. With what firm or house were you connected?

A. Well, I was with Green & Williams—salesman for Green & Williams.

Q. Who now.

A. Well, it is the firm of Walter B. Williams & Co. now.

Q. Firm of Walter B. Williams & Co.?

A. Yes, sir.

Q. State whether your transactions with the firms that you have named have been during the last 12 years numerous and important.

The WITNESS: Their business?

Mr. WILSON: Yes, sir; in connection with the sale of real estate.

A. Yes, sir; they have been.

Q. Are you acquainted with the property known as the Shepherd house, corner of K St. and Connecticut Ave.?

A. Yes, sir—that is, partly with it. I am acquainted with the outside of it, of course.

Q. You have never been inside of it?

A. No, sir; I have never been inside of it.

Q. Judging from its size, its appearance, and the locality in which it is situated, state what you consider the fair market value

872 of the property if sold at auction sale.

The WITNESS: If it were sold at auction sale?

Mr. WILSON: Yes, sir; if it were sold at auction sale in October of last year.

A. Well, sir, I do not think that property would bring more than $50,000.

Q. You do not think that property would bring more than $50,000?

A. No, sir; if that.

Q. State whether, in your judgment, that property, under the most favorable circumstances as to title, possession, &c., would bring or could be made to bring more than about $50,000 if sold under the hammer at an auction sale?

A. No, sir. I do not think it could.

Cross-examination by Mr. TOTTEN:

Q. Did you ever sell such property like this in question?

A. Well, no. I can't say that I ever have sold any.

Q. It is one of the best pieces of property in the city, is it not?

A. Well, I don't know. I don't think you could call it so now.

Q. Well, could you then?

873 A. Well, I do not know, at that time, whether you could or not.

Q. How much ground is there?

A. Well, I can't say.

Q. How many stories high is the house?
A. Well, about four; may be something like that.
Q. What is it built of?

Mr. WILSON (to Mr. Totten): Do you mean the house or the exterior?

Mr. TOTTEN: I mean the house.

The WITNESS: Well, I don't know that I took particular notice what it is built of.

Q. Is it well built or poorly built?
A. Well, it may be a well-built house.
Q. Were you ever inside of it?
A. No, sir.
Q. Did you examine it particularly?
A. No, sir. I have been by it, and noticed it several times.
Q. Did you ever stop to look at it critically?
A. No, sir. I don't think I have.
Q. What is the intrinsic value of such a house and such a lot?
A. Well, it might have cost perhaps a great deal of money to build it when it was built, but the question with me is whether it would bring that or not or whether it would sell for that much money under the hammer.

874 Q. Well, that is not the question now. I am asking you what is the intrinsic value.

A. Well, if I had the means I would not like to give over $50,000.
Q. Then you think it would bring as much at an auction sale as it is intrinsically worth?
A. Well, I don't know; I have never been inside. A man can spend a great deal of money inside of a house. A house may cost ten or twelve thousand dollars, but when you come to realize the money out of it, when you come to dispose of it, then it is worth what it will bring.
Q. Does the fact that a house is badly built or well built have any effect upon a sale?
A. Yes, sir.
Q. Does it not always have a controlling effect upon the price brought?
A. Yes, sir; but I would give a pretty good margin on that house.
Q. Well, suppose this house is badly built, how much is it worth at auction?
A. Well, it would not be worth as much as I said a little while ago—$50,000.
Q. You put your price on the idea that it is thoroughly well built, do you?
A. Well, yes; yes; I do.

875 Q. What would the house bring at private sale? I do not mean "under the hammer."

A. Well, that I don't know, sir.
Q. Well, what is your opinion about it?
A. Well, that is a question that is hard for me to answer.

Q. To whom have you been talking about this property within a day or two?

A. Well, I don't know that I have been talking to anybody in particular. I have spoken about it to several, but I had my ideas before anybody spoke to me.

Mr. WILSON (to the witness): Mr. Totten wishes to know whom you have been talking to about it. Tell him whom you talked to.

The WITNESS: I was speaking to my brother about it.

By Mr. TOTTEN:

Q. Did you speak about it to Mr. Hanna?

A. Well, I don't know. Mr. Hanna spoke to me about it, and I told him what I thought it would bring, and I spoke to Mr. R. C. Hewitt about it, and to Mr. Wash. B. Williams about it.

Q. Did Mr. Hanna tell you what anybody else had said about it?

A. No, sir; I don't think he did.

Q. Well, do you know that he did not?

876 A. No, sir; he did not tell me what anybody else had said about it.

Q. You cannot say what the house would bring at private sale?

A. Well, I can't say.

Q. Well, it would bring more at private sale than at auction, under the hammer?

A. Well, that would depend upon who wants it.

Q. Well, don't it all depend upon who wants it?

A. Well, yes, sir.

Q. How many sales have you made under deeds of trust within the last five years? I mean under the ordinary deeds of trust which prevail in this city. How many sales have you made to *bona fide* purchasers other than the owner of the debt?

A. Well, I do not know.

Q. How many of the sales were made to persons not interested in the debt?

A. Well, I have sold a great deal of property in the last five years under deeds of trust, but it would be impossible for me to say.

Q. Well, in 19 cases out of 20 the property has been bought by the creditor. Is not that true?

A. Well, I don't know.

Q. Well, what do you think about it?

A. Well, there has been a good deal of property bought in by the beneficiaries.

877 Q. Well, you hardly ever expect to sell property to a regular, *bona fide*, disinterested purchaser?

A. We have made some sales outside of the beneficiaries.

Q. How many; what percentage?

A. Well, I can't say.

Q. Five per cent. of all the sales?

A. Well, I don't know; it is a question I cannot answer, because I never gave it any thought. I know that sometimes we go to a sale and the beneficiary buys it, and sometimes we go to another and

little expect to sell it, but we sell it. Of course I never kept any account of anything like that.

Q. Can you not give us an idea of it—a general idea? Has the percentage been one out of twenty?

A. Yes, sir.

Q. Has it been two out of twenty?

A. I cannot answer.

Q. Has it been one out of fifteen?

A. Well, I would not like to say. If I had known that you were going to ask questions like that I would have referred to my real-estate book, but I am unable to say. I suppose we do sell one out of twenty. I can safely say that.

878 Q. If you were employed as auctioneer to sell the Shepherd house under a deed of trust and you were informed beforehand that deed of trust covered only a part of the house, what would you expect to result from your effort to sell? I want to know whether you would expect to sell it or not on any sort of reasonable terms.

A. Well, it depends altogether upon who is there to buy it.

Q. Would you sell a house under a deed of trust that covered only half?

A. Well, I should act under the instructions of the trustees.

Q. Well, I am referring now to a sale under a deed of trust that covered only half of the lot. Suppose the house covered an entire lot from front to rear and your deed of trust only covered one-half of the lot from front to rear, would you undertake to make a sale of that half of the lot?

A. Well, I should go according to the instructions of the trustees.

Q. Would you expect anybody to buy it?

A. Well, I can't say.

Q. Would you not regard that as an extraordinary way of putting up property for sale?

A. Well, I do not know.

Q. Did you ever hear the like of that?

879 A. Well, I don't know what you mean by "half of the lot," what you have reference to.

Q. Well, I put the case to you. This Shepherd house covers a large lot; the deed of trust under which this sale was attempted to be made covers only part of the lot; consequently only part of the house.

The WITNESS: Well, do I understand you to say that there are more than one trust on it?

Mr. TOTTEN: No, sir; I am not talking about that. I tell you simply that the house covers a very large lot; the deed of trust under which they undertook to make this sale covers only a part of that lot; consequently only a part of the house. Now, I want to know what your opinion is as to the chances of making a sale to a *bona fide* purchaser under such circumstances?

A. Well, of course it would perhaps hurt the sale of the property to a certain extent.

Q. Well, it would render it almost impossible for an ordinary purchaser to bid, would it not?

A. Well, yes; I have no doubt it would keep some from bidding.

Q. Well, would it not keep every *bona fide* purchaser from bidding unless they had some ulterior design other than getting the house?

A. I don't know but that it would.

880 Q. Would you buy a house under such circumstances?

A. No; I don't know that I would.

Q. Would you advise anybody to buy it as a professional auctioneer and real-estate man?

A. No; I don't know as I would.

Redirect examination by Mr. WILSON:

Q. If, as Mr. Totten says, this Shepherd house covers more ground than was embraced in the deed of trust under which the sale was made, do you not think that $50,000 bid, subject to the contingency and disadvantage of getting only a part of the house, was an extravagant sum to pay for what was bought?

A. I do.

Q. If 10 or 15 feet of the rear part of the house is on ground not covered by the deed of trust under which the lot was sold, was not $50,000 a very extravagant sum to pay for what was sold under the deed of trust?

A. Yes, sir.

Q. Upon the supposition that the purchaser got the whole of the house and the questioned right to immediate possession, do you or not think $50,000 as large a sum as could reasonably be obtained therefore at an auction sale?

881 A. I do, sir.

Recross-examination by Mr. TOTTEN:

Q. Well, then, altogether a sale of that kind would be simply a sacrifice of the property, would it not?

The WITNESS: What—selling it for $50,000?

Mr. TOTTEN: No, sir. A sale made of a piece of property like that under a deed of trust, which covered only a part of the real estate covered by the house—would not a sale of that kind be simply a sacrifice of the property?

A. I shouldn't say it would.

Q. Do you think that it would be a good sale?

The WITNESS: Do I think it would be a good sale for $50,000, only covering part of the lot?

Mr. TOTTEN: Yes, sir.

A. Yes, sir; I think it would be a good sale.

Q. Do you think any sale of that property made under those circumstances would be a good sale?

A. Well, yes; if the purchaser was satisfied with it.

Mr. TOTTEN: Well, I am speaking to you now as an auctioneer.

WALTER B. WILLIAMS.

Subscribed and sworn to before me this thirteenth day of June, 1880.

EDMUND A. BAILEY, *Examiner.*

882 Adjourned until further notice.

EDMUND A. BAILEY, *Examiner.*

WASHINGTON, D. C., FRIDAY, *May* 7, 1880.

Met pursuant to notice.

Present: Messrs. Totten and Johnston and the examiner; none of the counsel for the defendants appearing (owing to a misunderstanding as to time), examination adjourned until further notice.

EDMUND A. BAILEY, *Examiner.*

WASHINGTON, D. C., WEDNESDAY, *May* 26, 1880.

Met pursuant to notice.

Present: Messrs. Wilson, Hanna, and Totten, of counsel.

JOSEPH S. COLDWELL, a witness of lawful age, produced and sworn on behalf of the defendants.

By Mr. WILSON:

Q. State your residence and occupation.

A. I reside in Washington city; occupation, real-estate broker and auctioneer.

Q. How long have you been engaged in business as an auc-
883 tioneer of real estate, and how extensive has been your experience in buying and selling real estate in the District of Columbia?

A. About fourteen years, sir, I have been in business. I have sold a great deal of real estate in all parts of the city.

Q. You are well acquainted with the value of real estate?

A. I am well acquainted with the value, sir.

Q. Do you know the property known as the Shepherd house, corner of Connecticut avenue and K street, in Washington city?

A. I do, sir.

Q. Have you been in it and through it?

A. I have been through it, sir. I was shown through it by Mr. Shepherd.

Q. State what, in your opinion, was the fair market value of that property in October last, and what would be a fair and reasonable sum to obtain as a bid for the same at public auction.

A. If a person wished to purchase the property to occupy himself, it might sell from $50,000.00 to $55,000.00; as an investment I do not believe it could bring anything like that amount merely for investment.

Q. What, in your judgment, would be a fair and reasonable price for the property at public sale, under a deed of trust, provided the title to the whole of the property occupied by the house were per-
884 fect and there was no question as to the possession or right of possession in the vendee?

A. The answer that I have given is in case there is no dis-

pute of any kind in regard to the property, presuming the title to be perfect; but if the troubles that you speak of arise it would affect the sale of the property very materially, and I do not believe that ordinarily it would sell for over $25,000.00 or $30,000.00 under the circumstances.

Cross-examination by Mr. TOTTEN:

Q. Of what is this house constructed?

A. This house is constructed of stone and imitation and brick; of hard wood all through—the finish. It is a finely finished house.

Q. Is it a large or a small house?

A. It is a very large house, according to my idea of houses.

Q. Is it in a desirable portion of the city?

A. It is in a very desirable location.

Q. Did you ever sell a piece of property covered by a dwelling-house which extended beyond the property sold? It is a matter of fact in this case that the piece of property covered by the deed of trust under which this sale was attempted to be made does not extend the whole length of the house. The house runs con-
885 siderably beyond the ground sold.

A. That would affect the value of the property.

Q. Well, how much? Much or little?

A. Well, it depends upon how much and the probabilities of purchasing the piece of ground which is lapped over.

Q. Would not it practically destroy the sale of a piece of property such as this one?

A. It would injure the sale very much.

Q. Would the fact that a chancery suit was pending about the property sold have any effect upon the sale of the property under a deed of trust?

A. Any dispute in regard to the property, on selling the property subject to anything, even to taxes, would injure the sale of it.

Q. What is the intrinsic value of this property—the whole of it—the whole of the house?

A. Well, I suppose—the cost to build the house, you mean?

Q. No; I mean the intrinsic value of the house to-day.

A. Well, I think my answer would cover that.

Q. That is how much?

A. From $50,000.00 to $55,000.00.

Q. Not more than that?

A. No, sir. I will explain my reason for that. Ninety-nine persons out of a hundred wishing to build a house for anything
886 over $15,000.00 or $20,000.00 always prefer their own sites and model the house to suit themselves.

Q. There are very few people in the city of Washington who can afford to buy or rent such a house as that?

A. Yes, sir; very few.

Q. Do you know how much the house cost?

A. Well, sir, from my recollection of the price of things at the time it was built I should say that it cost about $100,000.00. At the time it was built everything was very high.

Q. Would it cost as much as Kilbourn's house?

A. I was never in Kilbourn's house. I was never in the other two.

Q. This is the best dwelling-house in the city, isn't it?

A. This is considered one of the best.

Q. Well, isn't it the best?

A. Well, some of the new houses recently built I have not been through.

Q. There is not a dwelling-house in the city of Washington as big as that, is there, which has as much room?

A. Well, I do not know. A great deal of money can be expended in the inside finishing of a house. I do not suppose that there is a house in the city that is finished better than that in the inside.

J. T. CALDWELL.

887 Subscribed and sworn to before me this 29 day of June, 1880.

EDMUND A. BAILEY, *Examiner.*

MARTIN M. ROHRER, a witness of lawful age, produced and sworn on behalf of the defendants.

By Mr. WILSON:

Q. Mr. Rohrer, what is your residence and occupation?

A. No. 200 I street is my residence; 509 Seventh street is my business place; my business is that of real-estate broker.

Q. In the city of Washington?

A. Yes, sir.

Q. How long have you been engaged in business as real-estate broker?

A. About fourteen years; between fourteen & fifteen.

Q. What has been the extent of your experience in buying and selling real estate?

A. Well, I have sold a good deal of real estate during all those years and bought a good deal, and a good deal now. I have sold largely for others and made a good many loans for others.

Q. What have been your opportunities of getting and ascertaining the value of real estate in the District within the last
888 year, for instance?

A. Well, they have not been as good as they have been heretofore, because business has been to some extent duller. Values have fluctuated very considerably. In some cases they have gone down and others gone up very considerably.

Q. Do you know the property known as the Shepherd property on the corner of K street and Connecticut avenue?

A. I do.

Q. Are you familiar with the values of property in that part of the city?

A. Well, to some extent. Probably I am not as conversant with it at this time as some others, but I have a general knowledge of values—such a knowledge that I can make up my own opinion as

to what property would be worth to buy and hold it or to buy and sell or to loan money upon.

Q. State what, in your opinion, was the value of the Shepherd property (I mean now the house entire), in October last, as a property to be kept and held as permanent investment?

WITNESS: Do you mean the property to be held entire?

Mr. WILSON: Yes, sir; the whole house.

A. Well, sir, I do not think it would be worth over sixty thousand dollars.

889 Q. State what, in your opinion, would be considered a fair market value of the property at public sale under a deed of trust, and what price the property (and I mean thereby the whole house) could reasonably be expected to bring at public auction in October last.

A. Well, rents were down pretty low then; it was pretty dark here, and I do not think it would have brought over fifty thousand dollars under the hammer.

Q. Would not that, in your opinion, have been a fair price to be obtained at auction sale for a good title and for immediate possession?

A. Yes. I should consider that a fair price at that time under the hammer.

Cross-examination by Mr. TOTTEN:

Q. What is the intrinsic value of that property as a dwelling-house without regard to speculation on investment?

A. Well, that is an excellent house, General.

Q. I ask you the question, What is it worth to a man for a dwelling-house, who is a man of fortune and wants the house?

A. I should suppose about sixty thousand dollars.

Q. Not more than that?

A. I should not think so.

890 Q. How much would it cost to build such a house as that?

A. Well, I could hardly say, but I should think that that house did not cost at any time over $75,000 or $80,000.

Q. Have you ever examined it carefully?

A. Well, not very carefully. I have been through the house. It is a magnificent house; but $80,000 is an enormous sum of money, and from my experience in building it would build a gorgeous house. It is an enormous sum of money, sir.

Q. Well, then, you think the intrinsic value of that house for any purpose does not exceed sixty thousand dollars?

A. It does not to-day.

Q. And you think it was less in October?

A. Yes, sir.

Q. How much less?

A. Well, I suppose ten thousand dollars less. Property in that section of the city has risen very considerably within the last six months.

Q. Well, enough to make a difference of ten thousand dollars on fifty?

A. Yes, sir; I should think fully. It is a magnificent locality, and yet in the eyes of some might not be considered as desirable as others close by. The house is one of three of a block and fronts a beautiful reservation.

891 Q. The house is altogether a desirable house?

A. Yes, sir; it is a magnificent house.

Q. How does it compare, in your judgment, with Kilbourn's house, which is the last one of that block?

A. Well, it is a larger house than Kilbourn's. It has a picture gallery attached to it, and it is a more expensive house than Kilbourn's, although I think Kilbourn's is the most desirable corner, as far as the locality is concerned.

Q. The deed of trust under which they undertook to make this sale did not cover all the ground covered by the house. What effect would that have upon the sale of the property?

A. Well, it would have a very bad effect. Purchasers at all times would have a prejudice (to even low-priced property) when the house would extend to ground affected in any way.

Q. Well, it would not be possible to make a sale of such property under any circumstances, would it, within a reasonable price?

A. No, sir; it would affect it very much.

M. M. ROHRER.

Subscribed and sworn to before me this 29th day of June, 1880.

EDMUND A. BAILEY, *Examiner.*

892 WILLIAM E. BURFORD, a witness of lawful age, produced and sworn on behalf of the defendants.

By Mr. WILSON:

Q. Please state your name, residence, and occupation.

A. William E. Burford; real-estate broker, at 1115 F street.

Q. How long have you been engaged in business as a real-estate broker?

A. I have been in business, sir, about six years.

Q. Do you know the Shepherd property at the corner of Connecticut avenue and K street?

A. I do, sir.

Q. What, in your opinion, would be a reasonable price to expect or to obtain for the sale of that property at public auction under a deed of trust or at a private sale in October last, at a forced sale?

A. Well, sir, I consider that if that property brought at public sale from $40,000 to $45,000 it would bring a good price.

Q. Do you think it would be reasonable to expect that the property would bring at public auction more than $50,000 if the title were perfect and the immediate possession could be guaranteed to the buyer?

893 A. Not according to the sales made in this city and in that vicinity, and for about that class of property; no, sir. I do not.

Cross-examination by Mr. TOTTEN:

Q. How many rooms are there in this house?

A. Well, I really do not remember the exact number of rooms in it; it has been some time since I was in the house. I think, to the best of my knowledge, that there are about—well, I am not able to answer that question.

Q. How many stories high is the house?

A. The house is three stories and basement.

Q. How deep is it?

A. Well, sir, I do not know that to a certainty.

Q. What is it built of?

A. It is built of stone.

Q. Altogether?

A. Well, no; there is some brick-work about it, I guess.

Q. What is the inside made of?

A. Well, "the inside"—do you mean the finish?

Q. Yes, sir.

A. Well, the inside is mostly hard-wood finish.

Q. What is the front on K street of the property?

A. I do not know, sir; I should suppose about 30 or 35 feet.

Q. When were you in the house?

A. It has been almost three years since I was in the house.

894 Q. How often were you in it?

A. I have been in the house about twice, I believe.

Q. Have you ever been upstairs?

A. I have been on the second story.

Q. What is that, the story over the basement?

A. No, sir; the story over the parlor.

Q. Did you ever examine the house critically?

A. Well, only as any man admiring fine property would, or was in the same business as I am.

Q. Do you know any property of the same class as that which has been sold recently in that quarter of the city?

A. I do not, sir.

Q. What is the character of the house; is it a first-class dwelling-house or not?

A. Oh, yes; it is a first-class dwelling-house.

Q. Do you know anything about building houses?

A. Well, something, sir; I never had any experience—any practical experience—in building.

Q. How much would it cost to build such a house as that now?

A. Well, sir, I should estimate that you could build that house to-day—well, I should say for about thirty thousand dollars. There is a great difference in the cost of building material.

Q. How much did these stone steps cost?

A. That I cannot tell you.

895 Q. How much did the heating apparatus cost? Did you ever see it?

A. No; I do not think I ever saw the heating apparatus.

Q. Do you really think thirty thousand dollars would build one-quarter of that house?

WITNESS: One-quarter?

Mr. TOTTEN: Yes, sir.

A. Well, I have just given it as my opinion that I think thirty thousand dollars would build that whole house.

Q. You never built many houses, did you?

A. No, sir; I never built many houses.

Q. Did you ever sell such a house as that?

A. No, sir; I never sold such a house as that.

Q. There are no such houses in the city of Washington, are there?

A. Well, few, if any. No, there is not a handsomer house in the city of Washington.

Q. It is the largest and handsomest house in the city of Washington, isn't it?

A. Well, yes. I guess it is not the largest, but it is as handsome a house as there is in Washington.

Q. Well, isn't it the largest?

A. Well, I do not know that. I have not examined all the houses in Washington. I do not remember the number of rooms in it, nor the exact size of the lot, nor anything of that kind; it is something that I never examined.

896 Q. Are you acquainted with Kilbourn's house on the other corner?

A. No, sir; I am not; simply with the outside appearance of it.

Q. Is there any difference in the value of those two houses, in your judgement?

A. Well, I cannot answer that question, because the interior of the house has a great deal to do with the value in the majority of cases.

Q. When a real-estate man is employed to sell a piece of property he puts it down as low as possible, doesn't he?

A. No, sir; I don't think he does.

Q. Doesn't he make the owner believe that the value is as low as possible?

A. I do not think that that is a broker's duty.

Q. Well, I ask you as a fact.

A. Well, most brokers are supposed to do their duty. I should not do that. I do not know the practice of other brokers, but I do not think that is the practice of upright, honest brokers. I think it is their object to get the most they can out of it. It is very natural to suppose so when their commission is regulated by the price they get.

Q. Do you think that would settle the matter—the rate of commission?

897 A. Well, a man is going to look after his private interests, and it is very apt to be an incentive to getting a large price.

Q. The difference would not be enough to compensate him for losing the sale entirely, would it?

WITNESS: The difference between a low and a high price you mean?

Mr. TOTTEN: Yes, sir.

A. Well, no.

Q. Therefore, a real-estate broker will sell for just as low as he can get the owner to take?

A. Well, the real-estate broker does not complete the whole transaction; there is generally a principal in it besides an agent or two, perhaps. Besides, the agent, as fas as my expences [experience] goes with the majority of men, makes the bargain and the real-estate broker reduces the arrangements.

W. E. BURFORD.

Subscribed and sworn to befere me this 18th day of June, 1880.

EDMUND A. BAILEY, *Examiner.*

JAMES M. JOHNSTON, a witness of lawful age, produced and sworn on behalf of the defendants.

By Mr. WILSON:

898 Q. You are one of the defendants in this cause, and were one of the counsel in cause number 6201, in equity, wherein George S. Pepper is complainant and Alexander R. Shepherd and others are defendants?

A. Yes, sir.

Q. State, if you please, if the decree passed in cause No. 6201, in equity, is in your handwriting; and, if so, state when and under what circumstances the same was prepared.

A. I was one of the counsel for Mr. George S. Pepper in cause No. 6201, equity, and took part in the argument of the case in his behalf. The contest in that case to which the argument related was as to a defence of usury which Mr. Shepherd had interposed and as to the refusal of Mr. Bradley (who was, with Mr. Philip, trustee in the first deed of trust on the property) to execute that trust at the request of Mr. Pepper. The court overruled the defence of usury which had been interposed by Mr. Shepherd and directed that I should be substituted as trustee in the place of Mr. Andrew Bradley in the deed of trust, which was the first lien on the property and in which Colonel Philip was the co-trustee. I had prepared a decree to that effect, but it contained some provision (I do not now
899 remember what) which was not satisfactory to the court, and the court thereupon dictated the form of decree, which I wrote down, sitting at the desk occupied by me as counsel. There is no possible doubt that the decree was intended to substitute me as trustee in the deed of trust in which Colonel Philip & Mr. Bradley were named, and the omission to name the liber and folio in the decree was due to the fact that my hasty writing of the decree prevented me from stopping to consult the papers in the cause. In the haste of the preparation of the decree and in the excitement natural to the argument of such an important case I myself did not observe that the liber and folio had been omitted, nor did I know of it until some weeks afterwards, I think.

Mr. TOTTEN (to the examiner): Counsel for the complainant in this cause objects to this testimony, so far as it is an effort to correct

a decree of the chancery court by the verbal testimony of counsel, and shall ask the court to strike that out when we come to a hearing.

By Mr. WILSON:

Q. Now, will you state what subsequently occurred with reference to the petition filed by Mr. Bradley and the granting of a preliminary restraining order thereon?

900 A. I do know that Mr. Bradley (I think as attorney-in-fact for Mr. Shepherd) filed a petition on which an *ex parte* restraining order was obtained, staying the sale under the first deed of trust which Colonel Philip and myself had already advertised. I have not that paper before me now and am unable to give the dates. Within a day or two after that *ex parte* restraining order had been allowed a motion was made by Mr. Wilson to dissolve this restraining order. I was not then acting as counsel for Mr. Pepper in this litigation, having ceased to take any active part after my appointment as trustee. Mr. Hanna, my partner, who was acting with Mr. Wilson, was, at the time of the hearing of the motion to dissolve this restraining order, absent from the city on business. I was present in court when the motion calendar was called, and my recollection is that this motion was one of the earliest on the calender, or, at least, it was reached very soon after the court convened. Colonel Totten was present in court, as was also Mr. Andrew Bradley. When the motion was called I stated to the court that I was no longer representing Mr. Pepper in the litigation because I had been appointed trustee in the deed of trust referred to, and that for

901 this reason I would not argue the case on behalf of Mr. Pepper, but that Mr. Wilson was his counsel. Mr. Bradley thereupon stated that he was not of counsel for any one in the case and would prefer, for personal reasons, not to argue the motion. Mr. Totten then stated to the court that if nobody cared to argue the motion he presumed the court would let the matter rest until the day in September on which the court had made the original restraining order returnable. This was said in rather a jocular way, and the court, in the same spirit, was disposed to make the postponement. I then stated to the court that this was a matter of grave importance both because of the expense that would be entailed by any hasty action and because of the amount involved; that it was Mr. Wilson's motion and I presumed that he would soon be in court, and requested the court to postpone the hearing of the motion until Mr. Wilson could come into court, but the court adhered to its original statement that the matter had better go over, though no order of any kind was signed. I then left the court-room, as did also Mr. Totten and Mr. Bradley. As I passed through the lobby of the court I met Mr. Wilson and informed him of what had taken place. We then returned together and asked the court to dispose of the

902 motion, and I volunteered to notify Mr. Totten. I did call at Mr. Totten's office and told him that we wished to dispose of that motion. He stated that he would leave town that night, and had a good deal of business to attend to, and he would be unable to

return to court to attend to the matter. I responded that it was a case of very considerable importance, and that his absence would probably be extended and prevent us from having a hearing for some time, and insisted that some disposition should be made of it, and I told him that I would give him notice then and there that the motion would be called up at an hour which I named, which was within an hour after this interview, and that I would state to the court what he said about his inability to attend, though the motion would certainly be called up for disposition. I returned to the court, met Mr. Wilson, and I am not now sure whether we spoke to the court before we prepared an order or not; but we did prepare an order, which Mr. Wilson presented to the court. I informed the court that I had notified Mr. Totten to be present; that he had declined because he was about to leave the city that night, and that I had also told him that the motion would be disposed of. I
903 think that this order was shown to Mr. Andrew Bradley before it was signed.

Q. Do you mean the order that was passed on the 26th of July modifying the restraining order (handing paper to witness)?

A. (After examination of paper). Yes, sir; the order of July 26th, 1879, modifying the restraining order. My present recollection is that the order was either read to the court by Mr. Wilson or read by the court before it was signed. The order of July 26th, 1879, is in my handwriting. I heard Mr. Bradley's testimony to the effect that the court had informed him that Mr. Wilson stated that he had shown this order to Mr. Bradley and that Mr. Bradley approved of it. I am very positive that Mr. Wilson did not give the court to understand by anything he said or did that this was a "consent" order. Those are all the facts with relation to that order that occur to me at this moment, unless my attention should be directed particularly to any other point.

Q. What occurred at the subsequent hearing of the motion for an injunction on the return day of the motion with reference to this order on the 6th of September?

A. Well, I do not know that I can state that anything particularly occurred, except that the motion was argued and the court
904 declined to grant the injunction.

Q. And dissolved the restraining order?

A. And dissolved the restraining order, as I recollect; but the record will show the terms of that order.

Q. With reference to the sale at public auction in October, have you any explanation that you wish to make concerning that?

A. Well, I should like to explain my relation to that sale. As trustee, with Colonel William H. Philip, I united in the advertisement of the sale of Mr. Shepherd's house, which had been postponed from time to time, and which finally took place on October 29th, 1879.

Before the sale I had a consultation with Colonel Philip, and we agreed that we would not permit the property to be sold for less than $45,000, and we further agreed that Mr. Philip should make such a bid on behalf of the trustees as would prevent the sale of the

property at any less price than that. At the trustees' sale Mr. Hanna as attorney for Mr. Pepper, made a bid of $40,000. Colonel Philip made a bid of $45,000 on behalf of the trustees, as we (Colonel Philip and I) had agreed should be done, and Mr. Hanna then bid $50,000 in behalf of Mr. Pepper, and the property was knocked down to him.

905 At the sale it was announced by me, and by the auctioneer at my request, that the property was sold subject to taxes, and in order that no uncertainty might exist as to amount of taxes which a purchaser should be compelled to assume I procured from the collector of taxes the certificate of overdue taxes, which I knew would operate as a conclusive statement as to taxes and prevent any additional claim on the part of the District.

That paper, dated September 5th, 1879, I now file.

(Said paper is here annexed and marked "Exhibit No. 1.")

EXHIBIT No. 1. Edmund A. Bailey, Examiner.

OFFICE OF THE TREASURER AND ASSESSOR, D. C.,
WASHINGTON, *Sept.* 5, 1879.

Collector, D. C.:

I hereby certify that the books and records of taxes and assessments of this office for years 1860 to 1879 show that upon property described on the face of this certificate taxes — due as follows: For 1877, $850.00; for 1878, $850.00, and for 1879, $753.23, in the name of Alexander R. Shepherd, west 43 feet 9 inches front of 2, square 164, with interest at 6 per cent.

WILLIAM MORGAN,
Ass't Assessor.

906 OFFICE OF CLERK IN CHARGE OF SPECIAL ASSESSMENTS,
WASHINGTON, *Sept. 5th*, 1879.

Collector, D. C.:

I hereby certify that upon the property described in this certificate the records of taxes of this office show $32.34 (foot way) on lot 2, sq. 164, fronting Conn. Ave., dated June 12, 1877; same lot and square fronting "K" St., paid in full.

F. W. BEALL,
Cl'k in Ch'ge,
P'r T. H. QUINN.

WATER REGISTRAR'S OFFICE,
No. 757. WASHINGTON, *Sept. 5th*, 1879.

Collector, D. C.:

I hereby certify that upon the property described in this certificate the records of this office show the water-main tax assessed on the W. 43 — 9 in. of lot 2, sqr. 164, paid in full.

E. W. CHURCH,
Cl'k in Ch'ge for the Water Registrar.

COLLECTOR'S OFFICE, DISTRICT OF COLUMBIA.

Mr. Hanna & Johnston:

On the following real estate, to wit, the west 43 feet 9 inches of lot numbered 20, in square number 164, assessed in the name of A. R. Shepherd, by the books and records of taxes and assessments there now appears to be due and unpaid the following assess-
907 ments of general tax for the years ending June 30, 1877, 1878, and 1879, respectively, and in the amounts set forth herein and certified to by the endorsement of the assistant assessor, the following assessments for special improvements: $32.34, dated June 12, 1877, as set forth herein and certified to by the endorsement of the clerk in charge.

Also the following assessments for water-main tax, paid in full, as set forth herein and certified to by the endorsement of the clerk in charge.

Fee, 50 cents; paid.

Witness my hand and seal of office this 5th day of Sept., 1879.

JOHN F. COOK, *Collector.*

By Mr. WILSON:

Q. Why was that statement made as to the taxes?

A. The deeds of trust commonly used in this District did not at that time direct the trustees to pay overdue taxes from the proceeds of sale, and some question had already been made as to the property of making that deduction, principally on the authority of a case reported in the 3d Otto. It was to prevent any misapprehension on the part of the purchaser as to his liability for taxes and to avoid any dispute as to whether the purchaser bought the property free of taxes or not that I made this announcement and showed this certificate. I wish also to add that the proceedings in cause No. 6201 show, and it was generally understood by the parties
908 interested, that the deed of trust under which Colonel Philip and I were selling (which was the first lien upon the property) did not cover the whole of the house, or rather it did not cover a portion of an addition attached to the main building. To prevent any misapprehension on the part of purchasers as to the amount of property sold I exhibited a plat prepared by Mr. Cluss, the architect of the building, and which was filed as an exhibit to the testimony in cause No. 6201. Because of the intervention of a deed of trust in favor of Mrs. Mercy Maria Carter I did not see any prospect of being able to rectify this difficulty as to the evidently erroneous description in Mr. Pepper's deed of trust, and therefore advertised the property for sale and sold it under the imperative instructions of Mr. Pepper to do so.

Q. What, if any, instructions had you received from Mr. Pepper as to receiving from the debtor the amount of the debt, with interest? And state, if you know, whether Mr. Pepper was at all times willing to receive the money due him and interest.

A. So far as I know, Mr. Pepper would have been glad at any time to have taken his debt, for he never, after I heard of the case, regarded the security as at all adequate.

Q. He did not want the property, did he?

909 A. I never heard it intimated by anybody in Mr. Pepper's interest that he wanted the property, nor do I believe that he wants it now. I think he would be willing to sell it for his debt, unless he has very suddenly changed his mind, of which I have no suspicion. There is one thing I should like to add, as influencing my mind in making the sale. I always believed that I had the power to make it or I never should have consented to take any steps to that end. I never believed there was any defect in the original decree in 6201 except a clerical error, and I believed that the court would not treat that error in the decree as vitiating my authority as trustee. Moreover, in addition to the order of July 26th, 1879, of which I have already spoken, the court in the case of Mercy Maria Gray (which was a bill filed to enjoin the sale which we had advertised) *the court* refused to enjoin that sale unless upon condition that Mrs. Gray gave a bond to indemnify the parties in interest from any loss by reason of the injunction. If the court had regarded the decree then in existence as insufficient to give me power to make the sale, I presumed that it would have enjoined the sale absolutely, without imposing any conditions upon Mrs. Gray,

910 and the fact that the court did pass this order in the suit of Mrs. Gray had considerable influence in fixing my belief in my power to sell. I would like also to add that I have no ill feeling in the world towards Mr. Shepherd, nor have I any wish to do him any injury by forcing a premature sale of this property, and if I had believed that any circumstance attending that sale would have injured him or deprived him of any right which he could fairly ask I would not have consented to allow the sale to go on.

(Right to cross-examine waived by Mr. Totten.)

(Upon reading over the foregoing testimony witness desires to make the following addition thereto, having omitted to state it at the examination): After the words "power to sell," on preceding page, insert: This is especially so, because the same judge who passed the final decree of July —, in No. 6201, and the other later decrees in that case, refused the injunction in Mrs. Gray's case, though that proceeding called in question my power under these very orders which he had granted and which he thus construed.

(The above addition is objected to by Mr. Totten as incompetent.)

JAMES M. JOHNSTON.

911 Subscribed and sworn to before me this 29th day of June, 1880.

EDMUND A. BAILEY, *Examiner.*

Adjourned until Thursday, May 27th, 1880, at 3 o'clock p. m.

EDMUND A. BAILEY, *Examiner.*

WASHINGTON, D. C., THURSDAY, *May* 27, 1880.

Met pursuant to adjournment.

Peesent: Messrs. Wilson and Hanna; and, owing to absence of Mr. Totten, adjourned to Monday, May 31, 1880, at three o'clock p. m.

EDMUND A. BAILEY, *Examiner.*

WASHINGTON, D. C., MONDAY, *May* 31, 1880.

Met pursuant to adjournment; and, at instance of counsel for defendants, adjourned until further notice.

EDMUND A. BAILEY, *Examiner.*

912 WASHINGTON, D. C., MONDAY, *June* 7, 1880.

Met pursuant to notice; and, in consequence of the absence of Mr. Wilson, adjourned until further notice.

EDMUND A. BAILEY, *Examiner.*

WASHINGTON, D. C., THURSDAY, *June* 10, 1880.

Examination in pursuance of notice postponed at instance of counsel for defendants until Monday, June 14, 1880, at three o'clock p. m.

EDMUND A. BAILEY, *Examiner.*

WASHINGTON, D. C., MONDAY, 14*th June*, 1880.

Met pursuant to postponement.

Present: Messrs. Totten, Hanna, and Wilson, of counsel.

JOSEPH C. G. KENNEDY, a witness of lawful age, produced and sworn on behalf of the defendants.

By Mr. WILSON:

Q. Mr. Kennedy, please state your name and occupation, and how long you have been engaged in buying and selling real estate.

913 A. Joseph C. G. Kennedy; been connected about twenty-five years, directly and indirectly, with the care of real estate—the purchase and sale of it; it is a part of my business.

Q. Have you any special knowledge of any one of the houses on K street between Seventeenth street and Connecticut avenue?

A. I have been in them all.

Q. Have you had charge of any one of them?

A. I have charge of the center house.

Q. Owned by——

A. By Doctor Bruer, of New York—A. K. Bruer.

Q. That house has been rented by you or under your direction?

A. Yes, sir.

Q. Will you please state for how long, and what rent has been paid.

A. The income from rental would average from $2,500 to $3,000 a year for the house and furniture—about that. I would rent it now

for $3,000.00, from one (1) to five (5) years, furnished—handsomely furnished.

Q. How much of the time that you have had it in charge has it been vacant and it been impossible for you to find any tenant?

A. Oh, from seven to eight months out of every twelve.

914 Q. Have you been in the house at the corner of K street and Connecticut avenue, known as the Shepherd house?

A. Yes, sir.

Q. State, from your knowledge of the real-estate market and experience as a buyer and seller of real estate, what would have been a fair and reasonable price for the Shepherd house if sold at public auction under a deed of trust in October last.

A. Oh, I should say between fifty or sixty thousand dollars.

Q. State upon what your estimate of the value is based.

A. Because you may sell it a hundred times and cannot get more, in my opinion; you may put it up in every month of the year and there would be no buyer as high as fifty thousand dollars. That is my opinion. I have no doubt the house cost more. I judge the value of the house from what it would be likely to bring in any period of years—five, ten, or twenty—and pay the taxes and insurance.

Cross-examination waived.

JOS. C. G. KENNEDY.

Subscribed and sworn to before me this thirtieth day of June, 1880.

EDMUND A. BAILEY, *Examiner.*

915 JOHN SELDON, a witness of lawful age, produced and sworn on behalf of the defendants.

By Mr. HANNA:

Q. You are a member of the bar of the District of Columbia, Mr. Selden?

A. Yes, sir.

Q. State whether or not a sale of original title of sub-lot "A," in square one hundred and sixty-four, was made through you to Governor Shepherd; if so, when and at what price.

A. I do not understand very distinctly what you mean by an "original title." A certain Mr. Harris, of Georgia, owned original lot three (3), in square one hundred and sixty-four (164), and this lot was subsequently subdivided into lots "A" and "B." By his will certain persons in the State of Alabama or Georgia, or both, became his devisees, and these devisees, in respect of sub-lot "A," I represented, and for them effected a sale of sub-lot "A" to Governor Shepherd for the sum of three thousand dollars ($3,000.00).

916 Q. State, please, when these negotiations began and when they closed, as near as you can recollect, and when the deed passed to Governor Shepherd.

A. They began some time prior to the 20th of May, 1876,

and, I think, in the year 1876. The matter was not consummated by Governor Shepherd as speedily as I had expected, and I believe it was not until the 22nd of April, 1879, that all the money due upon the sale of the property to Governor Shepherd was, in fact, paid by him. Upon the 23d of June, 1877, Governor Shepherd gave me three checks upon Messrs. Riggs & Co., of this city—the first for $1,000, payable on the 5th of July, 1877; the second for the like sum, payable on the 25th of the same month, and the third for $1,165, payable on the 10th of August, 1877. This last check represented certain accrued interest upon the $3,000 which was the consideration money for the sale. The deed, though made some time earlier (perhaps a year or two earlier), was not delivered to Governor Shepherd until after he had paid the balance of the purchase-money on the 22nd of April, 1879. I ought to say that $1,000 of this money, in payment of one of those checks, was, as I now remember, sent me by Mr. William F. Mattingly, who in this matter had represented Mr. Shepherd to some extent, as had also Mr. William A. Gordon.

917 By Mr. WILSON:.

Q. State when and to whom the deed to lot "A" was delivered.

A. My impression is pretty strong that I delivered it to Governor Shepherd; it is possible, however, that I might have sent it to Mr. Mattingly, as his counsel.

Q. "When, to whom" was the question?

A. As I have already stated, the deed was delivered either to Mr. Shepherd, or to Mr. Mattingly as his counsel (though I think to Mr. Shepherd himself) subsequently to the 22nd day of April, 1879, the date on which the balance of the purchase-money was finally paid.

Q. State what, if any, request you received from Mr. Shepherd for the execution of any deed to that property to another person as grantee?

A. Mr. Shepherd wrote me the following letter, which I recognize as in his handwriting, and it is signed by him (reading from paper):

"OFFICE ALEX. R. SHEPHERD,
"No. 1705 K STREET,
"WASHINGTON, D. C., *22d of April*, 1879.

"Mr. John Selden, 1505 Penn. Ave.,

918 "MY DEAR SIR: I have to-day taken up check as requested. I will be obliged if you will have deed to Lewis Clephane made as suggested by you, and will bear all expences attendant thereupon.

"Very truly, ALEX. R. SHEPHERD."

I never suggested to Mr. Shepherd to have the deed made to Lewis Clephane or to any one else. Not long before this letter was received by me I met Mr. Shepherd on Pennsylvania avenue, and he suggested to me that he would have a deed made in the name of somebody else (in whose name I have forgotten), and wished to employ

me to have that effected. I declined to have anything to do with it, for the reason that my clients were non-residents of the District, and that however upright my conduct might have been in point of fact, if I afterwards became the counsel of Mr. Shepherd they might have supposed there might have been something improper in my representing them first and him afterwards. I replied to this letter on the same day as follows. I now read from my letter book, kept in the usual manner:

"APRIL 22, '9.

("187" was printed on my business paper, and the figure "9" was written in, making "1879.")

919 "A. R. Shepherd, Esq.

DEAR SIR: I have your favor of to-day, and am pleased to know of the balance due on the check. As to the new deed, I should prefer that Mr. Mattingly or some other gentleman who has not acted adversely to you would attend to it. I do not think I suggested that deed, but I will give such a letter to Mr. Richards, of Alabama, the counsel of the grantors in the old deed, as will enable your counsel to act with every effect that would result from my own employment.

Yours very truly, JOHN SELDEN."

Q. Do you know of a deed having been subsequently executed to that property by the heirs to which you have referred?

A. I think I do not, sir.

Mr. TOTTEN (to the examiner): All the testimony of Mr. Selden is objected to because it is inapplicable to this case, irrelevant, and immaterial, and I notify counsel for the defendants that I shall move at the proper time to strike it out.

(Cross-examination waived.)

JOHN SELDEN.

920 Subscribed and sworn to before me this thirteenth day of June, 1880.

EDMUND A. BAILEY, *Examiner.*

Mr. HANNA: We offer in evidence the record in the case of Gray *vs.* Pepper, equity cause No. 6954.

Mr. Totten objects to the introduction of said record in evidence, as the same is improper and incompetent.

FRANCIS H. SMITH, a witness of lawful age, produced and sworn on behalf of the defendants.

By Mr. WILSON:

Q. Mr. Smith, have you had occasion to have any conversation with Mr. Shepherd, before or since the institution of this suit, in relation to his indebtedness to Mr. Pepper, the defendants in this case?

WITNESS: Since what date?

Mr. WILSON: Either before or after the institution of this suit.

A. I have had several conversations with Mr. Shepherd on that subject.

Q. State, if you please, what he said to you concerning his
921 determination not to pay the debt due Mr. Pepper, and the effort which he would make to defeat the same.

A. In the earlier conversations I held with him (I should say, perhaps, a year and a half ago) he expressed his intention to pay the indebtedness and made one or two propositions. Later on (I should think within the last three or four months) he has expressed a different intention.

Q. What did he say?

A. The conversations I have held with him were mere casual ones, generally on the street. I do not know that I have heard him state that he did not intend to pay the amount at some time. He has two or three times made the remark that it would be a very long time before Mr. Pepper would get either the property or the money, and I think has asked me to convey that information to Mr. Pepper.

Q. Well, just state what that was—what he said to you that he wanted you to tell Mr. Pepper—in his own language.

A. I do not know whether I can give that. He said on one occasion to "tell old Pepper that he won't get his house by any legal process until hell freezes over," or some strong expression indicating some long period distant.

Q. What reference had he then to the legal proceeding that was then pending? What was the conversation about?

922 A. It referred to the legal proceedings in reference to the sale of the property, I think, last October, since that time—that have taken place since that occurrence.

Q. State what he requested you to state to Mr. Pepper as to his payment or non-payment of the debt due him.

A. I do not think I can repeat his language; it was a mere casual conversation on the street.

Q. Well, state the substance of it.

A. The substance of it was that he did not intend to pay it.

Cross-examination by Mr. TOTTEN:

Q. Are you Mr. Pepper's confidential agent in Washington?

A. No, sir.

Q. What are your relations with him?

A. I do not know that I have any business relation with him except that I have acted as the agent of three or four parties who have borrowed money from him.

Q. Didn't you act as Pepper's agent?

A. No, sir.

Q. Didn't you act as Pepper's agent in the Kilbourn matter?

A. No, sir.

923 Q. Don't you lend money for Pepper here?

A. No, sir; not as his agent.

Q. Haven't you been doing it for the last two or three years?

A. As I have stated, I have borrowed money of Mr. Pepper as the agent of two or three—three or four parties.

Q. Does not Mr. Pepper call upon you for information about his private business here?

A. He has written to me several times.

Q. Well, hasn't he more than several times; hasn't he been in the habit of writing to you and getting you to attend to his private business for several years?

A. No, sir; I have only known him a little more than a year.

Q. Do you say that you were not his agent in that Kilbourn case?

A. No, sir.

Q. You do not say so?

A. I say I was not.

Q. You swear you were not?

Mr. WILSON (to the witness): I suppose you are under oath.

A. (To Mr. Totten): Yes, sir; I am under oath.

Q. Whose agent were you?

A. Either Kilbourn's or General Brady's—I don't know
924 which. I was paid for my services by General Brady.

Q. Did Mr. Pepper ever pay you anything for services?

A. No, sir.

F. H. SMITH.

Subscribed and sworn to before me this 29th day of June, 1880.

EDMUND A. BAILY, *Examiner.*

Adjourned until Tuesday, 15th June, 1880, at three o'clock p. m.

EDMUND A. BAILY, *Examiner.*

WASHINGTON, D. C., TUESDAY, *June 15th*, 1880.

Met pursuant to adjournment.

Present: Messrs. Totten, Wilson, and Hanna.

In consequence of the absence of defendants' witnesses examination adjourned until further notice.

EDMUND A. BAILY, *Examiner.*

WASHINGTON, D. C., MONDAY, *June* 24, 1880.

Met pursuant to notice.

Present: Messrs. Hanna, Wilson, and Totten.

925 JAMES E. FITCH, a witness of lawful age, produced and sworn on behalf of the defendants.

By Mr. WILSON:

Q. Mr. Fitch, did you file the bill in the case of Mercy Maria Gray against George S. Pepper and others, No. 6954, equity docket, in September, 1879?

WITNESS: What do you mean by filing "it?" By filing I suppose you mean the same as signing it.

Q. You signed it and swore to it?

A. Yes, sir.

Q. At whose suggestion was the bill filed?

A. Well, knowing of the proceedings in this case, Lewis J. Davis and myself, acting as the advisers of Mrs. Gray, agreed upon this as the best course to take to protect her interests.

Q. Who gave you information as to other pending proceedings concerning the property?

A. Mr. Bradley, as I recollect it—Mr. Andrew C. Bradley.

Q. Did he suggest the filing of this bill?

A. Yes, sir; to the best of my knowledge; to the best of my recollection he came and asked for Mrs. Gray's ad-ress and told me that she would need to take such a step as this to protect herself.

926 Q. From whom did you obtain knowledge of the facts stated in that bill?

A. I can hardly answer that question at present. I do not recollect what date I had. Of course, I must have had something before me, but whether it was the note itself or information from Mr. Davis or what I cannot now recollect.

Q. What was due Mrs. Gray from Shepherd at that time?

A. As I have stated there, I believe, the note, $35,000.00, and interest from May 15, 1877.

Q. At nine per cent. per annum?

A. Yes, sir; at nine per cent. per annum. I would like to say that I am not a regular agent for Mrs. Gray. I was one of the trustees named in the deed of trust, but outside of that I had little to do with the matter. Mr. Davis and I acted as advisers for her in this particular matter.

Q. What knowledge or information have you as to that indebtedness or any part thereof having been since paid?

A. I have none since Mrs. Gray was here, which was in September, 1879.

Q. Was anything paid then?

A. I think not, sir, from what she said.

Q. You do not know of anything having been paid then?

A. No, sir; not since that time.

927 Mr. TOTTEN (to the examiner): Counsel for the complainant objects to all the foregoing testimony because it is irrelevant and immaterial, and notifies the counsel for the defendants that he will move to strike it out at the hearing.

(No cross-examination.)

JAMES E. FITCH.

Subscribed and sworn to before me this thirtieth day of June, 1880.

EDMUND A. BAILEY, *Examiner.*

It is agreed and stipulated between respective counsel that the time for taking testimony shall be extended from that limited by the order of court so as to embrace all the testimony which has been taken since the time limited by such order has expired, as well as such further evidence as may be offered in behalf of the defendants or offered by way of rebuttal in behalf of the complainant.

Adjourned until Friday, June 25th, 1880, at two o'clock p. m.

EDMUND A. BAILEY, *Examiner.*

928 WASHINGTON, D. C., *Friday, June* 25, 1880.

Met pursuant to adjournment.

Present: Messrs. Totten and Hanna.

No witnesses appearing, adjourned until Monday, June 28, 1880, at two o'clock p. m.

EDMUND A. BAILEY, *Examiner.*

WASHINGTON, D. C., *Monday,* 28 *June,* 1880.

Met pursuant to adjournment.

Present: Messrs. Totten, Wilson, and Hanna.

NATHANIEL WILSON, a witness, of lawful age produced and sworn on behalf of the defendants, deposes and says:

I was of counsel in the case of George S. Pepper *v.* Alexander R. Shepherd and others, No. 6201, equity, at the time the decree was made, on the 12th day of May, 1879. The decree was entered on the 12th day of May, 1879.

After that decree was entered and an appeal taken therefrom by the defendant Shepherd it appears from the record that a petition was filed on behalf of Mr. Shepherd, and, without any notice
929 to me as counsel or to any of the counsel in the case, so far as I am informed, a restraining order was, on the 24th day of July, granted by Justice MacArthur restraining the sale of the property described in the proceedings until after the 2d day of September, 1879, that being the day fixed for the hearing of the petition. That order, as I say, was passed on the 24th day of July, 1879, without notice.

On the next day—that is, on the 25th of July—a motion was made on behalf of the complainant to dissolve that restraining order. On the following day that motion came up in my absence, and when I reached the court-house I was informed that for some reason the hearing had gone over and the restraining order was to continue until the 2d of September, and the hearing of the motion for the dissolution of the restraining order was to go over until that time. Judge MacArthur was still holding court, and I went to him expressing regret that the matter had been disposed of in my absence and suggested a modification of the restraining order so as to permit the continuance of the advertisement and to make a sale possible at the time originally advertised, if the court should finally refuse the injunction asked for in the petition.

I then went into the room of the bar association, and Mr.
930 Johnson and I prepared the order which is among the proceedings in the case (No. 6201), and marked as filed July 26, 1879. My recollection is that Mr. Bradley saw that order after it was prepared, but did not consent to it nor was he asked to consent to it. He requested that Mr. Totten should be notified that we proposed to call the matter to the attention of the

court, and Mr. Totten was so notified, as I was informed. I took the order and presented it to the court, and read it to the court, but did not inform the court that it had been consented to, or that there was no objection to it, or that no one would appear to oppose it, but did state distinctly that Mr. Totten had been sent for and declined to come. The court signed the order just as it had been prepared. I heard nothing more of it until the day appointed for the hearing of the motion and the petition, the following September. I did then state to the court that the object of getting the order was to continue the advertisement and to save the time that would be lost in case the injunction was denied and a new advertisement required. I have no doubt that I did state to the court that there was no intention to deceive or impose upon the court, as there was not in point of fact. The court was fully conversant with all the circumstances and quite as able to understand their significance as any of
931 the counsel in the case. I did not at that time or at any other waive any rights that were secured or given by the order passed on the 26th day of July, nor did I in any way stipulate that that order was to have any other effect whatever than that property to be given to its provisions and conditions as plainly expressed on its face.

The judge at the hearing referred to, on the 6th of September, 1879, dissolved the restraining order and denied the injunction. From the time the decree was entered, on the 12th of May, 1879, until some time after the sale a correction of the alleged clerical error or omission in the decree of May the 12th was impossible, so far as the court was concerned who passed the decree, because of the appeal taken therefrom by the defendant Shepherd.

Cross-examination by Mr. TOTTEN:

Q. You seem to complain in your testimony that you had no notice of the application for this restraining order that was granted on the 24th day of July, 1879. Is it usual to give parties notice before granting a restraining order in our court?

A. It is not, and it is quite as unusual after a final decree to obtain in the same cause a restraining order upon a petition
932 filed by one of the parties.

Q. On what ground was the restraining order dissolved in September by the court?

A. Various considerations were urged upon the court. Among other things that were mentioned, and I think mentioned by the court, was the fact that the case had been taken by appeal to the court in general term.

Q. I did not ask you what grounds or reasons were urged for dissolving it. I asked upon what ground the court dissolved the restraining order.

A. I cannot answer any more definitely than I have answered.

Q. Don't you know that the court dissolved it purely upon the ground that the appeal was pending at that time?

A. I do not.

Q. Was there any other ground mentioned by the court?

A. I do not know whether there was any or not. I have stated that it was a ground mentioned by the court, but whether there were any others mentioned or not I do not know; there were a number of grounds urged.

Q. What was the object in putting all those allegations and averments in that order of the 26th of July?

WITNESS: What allegations do you refer to?

933 Mr. TOTTEN: Well, in reference to the deed of trust, by way of aiding the original decree—those that refer to it. The motion in that case was made purely for dissolving that restraining order.

A. If you will refer to the particular allegations and averments that you wish me to answer concerning, I will answer you.

Q. There is a good deal more in that order of the 26th of July than was necessary to continue that advertisement?

A. I do not think there was.

Q. Was it or not the object of the drawer of that order to bolster up the deficient decree that had been made on the 12th of May?

A. The object of that order was to describe with certainty the deed of trust under which the sale was to be made, so that there would be no further ground for a pretense or excuse as to any clerical omission.

Q. Then it was intended to supply deficiencies in the original decree, was it?

A. I do not say that it was.

Q. Do you say that it was not?

A. I do not say that it was not.

Q. You drew the order, didn't you?

A. It is not in my handwriting.

Q. Well, you drafted it originally and Johnston copied it. Isn't that the way?

934 A. I do not think that I drafted it. (After a pause:) Well, I dictated it, probably. We agreed upon it together. It is the same as if I had.

Q. You relied upon it in the advertisement, didn't you, to bolster up the original decree?

A. The advertisement will speak for itself.

Q. Did you rely upon it to bolster up that decree, and do you now?

A. I cannot say that I do. The advertisement speaks for itself. The order was made and obtained under exactly the circumstances that I have stated, as all the parties and all the counsel were perfectly aware that the alleged omission of the book and page was a mere accident——

Q. (Interposing.) Well, they were all equally sure that it was no way to correct an accident.

A. Just wait until I get through, if you please. If there had been any purpose or desire to have a fair sale under a decree containing no omissions or mistakes for the benefit of the parties or for the

benefit of the property it could have been very readily and in a moment done.

Q. Didn't Judge MacArthur, on the 6th of September, when he overruled or dissolved the restraining order, advise counsel for Pepper that it would be very unsafe to make a sale under that defective decree?

935 A. I do not remember that he did.

Q. Well, now think a minute and see if he didn't.

A. He advised counsel that they would be responsible for any sale that would be made under that decree.

Q. Didn't he also advise counsel that the decree was defective, in his judgment, and that it would be unsafe to make a sale under such a decree?

A. He certainly did not, so far as I recollect

Q. Didn't he make a statement of that kind from the bench?

A. He stated that the decree was not as full as he might have expected from the counsel who prepared it, but he did not intimate that it was fatally defective, and did not express any decision or opinion, definite or decided, as to the sufficiency or deficiency of that decree.

Q. Didn't he say that if counsel persisted in making a sale they must do it upon their own responsibility?

A. He may have said something of that sort.

Q. What notice did anybody have of that application of yours upon which you obtained that order of the 26th of July; you say Totten was notified; what *what* notice did he have?

A. I say that I was informed that he was notified.

Q. Well, what was your information about it?

936 A. My information was that Mr. Johnston came to your office and told you that the motion was coming up.

Q. In a few minutes?

A. In a few minutes.

Q. Well, and didn't he also tell you that Totten stated that he was going to Wisconsin that evening and could not go over? The 26th of July was Saturday, wasn't it?

A. I don't know.

Q. Well, didn't he say something about that—about Totten's going away?

A. I think he said that Totten was going away.

Q. That day?

A. That day—that night.

Q. That evening—yes; 7.40. What is the usual notice required in such application?

A. Oh, this application came up in due form.

Q. And was disposed of?

A. And disposed in my absence. I came in a few minutes afterwards.

Q. Well, the notice for that application had been given only the day previous?

A. Only the day previous, I believe.

Q. At least two days are required for notices in our equity court. Isn't that so?

A. The rules will speak for themselves.

Q. Well, two days is the minimum time required, isn't it?

937 A. I am not sure that it is not four; I don't know.

Redirect examination by Mr. HANNA:

Q. Didn't the court refuse to add to the decree passed September 6th the request of defendant's counsel that the injunction was denied because of the case being on appeal, and did not the court decline to qualify it in any way?

A. That is my recollection—that Mr. Totten tried to get something into the decree that would show where the case was, and it was denied.

Upon reading over the foregoing testimony the witness states as follows: In reference to the question whether the court said that if counsel persisted in making the sale they must do it upon their own responsibility, I wish to say that to the best of my recollection the court did not say any such thing, but did say that, of course, counsel would see that the sale was made under the proper deed of trust.

NATH'L WILSON.

Subscribed and sworn to before me this twenty-ninth day of June, 1880.

EDMUND A. BAILEY, *Examiner.*

938 Adjourned to Tuesday, June 29th, 1880, at 2.30 o'clock p. m.

EDMUND A. BAILEY, *Examiner.*

WASHINGTON, D. C., TUESDAY, 29*th June*, 1880.

Met pursuant to adjournment.

Present: Messrs. Totten, Hanna, Wilson, and Johnston.

JAMES M. JOHNSTON, recalled on behalf of defendants, deposes and says:

The trustees paid the cost of advertising in the "Star" newspaper, $227.13; "Post," $239.28; the auctioneer, $150.00; the trustees' commissions, $1,000.00. Those are the only payments that I know about personally. They were paid by money furnished by Mr. Pepper.

JAMES M. JOHNSTON.

Subscribed and sworn to before me this 30th day of June, 1880.

EDMUND A. BAILEY, *Examiner.*

Mr. Hanna introduces in evidence duplicate receipts of taxes paid on the Shepherd property by Mr. Pepper. The same
939 are hereto attached and marked, respectively, Exhibit No. 2, Exhibit No. 3, and Exhibit No. 4.

EXHIBIT No. 2. Edmund A. Bailey, Examiner.

Folio 5.

WASHINGTON CITY.

Alexander R. Shepherd to the District of Columbia, Dr., for tax on real estate for the year ending June 30, 1877.

Total tax, $1.50 per $100 assessed valuation.

Square.	Lot.	Value of lot.	Value of impr's.	Total assessed value.
164	Of 2	$116 74	$45,000	$—

[Written across the face:] Duplicate. Day Book 16, 293. Paid Oct. 1, 1879.

To all of tax	$850 11
To interest at six per cent	131 75
	$981 86

Received payment,

JOHN F. COOK, *Collector*,
By —— ——.

E. W. W. E.

[Written across the face:] Duplicate.

940 EXHIBIT No. 3. Edmund A. Bailey, Examiner.

Folio 2.

WASHINGTON, D. C.

Alexander R. Shepherd to the District of Columbia, Dr., for tax on real estate for the year ending June 30, 1878.

Total tax, 1.50 per $100 assessed valuation.

Square.	Lot.	Value of lot.	Value of imprs.	Total assessed value.
164	Of 2	$116 74	$45,000	$—

[Written across the face:] Duplicate. Day Book 19, 211. Paid Oct. 1, 1879.

To all of tax $850 11
To interest, six per cent. 80 76

$930 87

Received payment,

JOHN F. COOK, *Collector.*

E. W. W. G.

941 EXHIBIT No. 4. Edmund A. Bailey, Examiner.

Folio 7.

WASHINGTON, D. C.

Alexander R. Shepherd to the District of Columbia, Dr., for tax on real estate for the year ending June 30, 1879.

Tax, $1.50 per 100 assessed valuation.

Square.	Lot.	Value of lot.	Value of impr's.	Total assessed value.
164	Of 2	$10,215	$40,000	$—

[Written across the face:] Duplicate. Day Book 20, 335. Paid Oct. 1, 1879.

To all of tax $753 23
" abatement .....
" interest, six per cent. 26 36

$779 59

Received payment,

JOHN F. COOK, *Collector.*

E. W. W. G.; D. W.

[Written across the face:] Duplicate.

942 ANDREW C. BRADLEY, a witness of lawful age, produced and sworn on behalf of defendants.

By Mr. HANNA:

Q. Mr. Bradley, are you the attorney-in-fact for Mr. Shepherd?
A. I am one of his attorneys-in-fact.
Q. Who are the others?
A. William F. Mattingly is the other—so constituted on the 1st day of May, I think, 1880.
Q. As such attorneys-in-fact are you at present in actual possession of the premises mentioned in this suit or have you control thereof?
A. Well, I don't know. I will state the fact and leave you to

judge the amount of control that we have. There is a person in possession of the house, placed there by Mr. Shepherd before he left the District for Mexico; and I suppose, under the general authority that we have to act for him in his matters, that we have control of that property.

Q. It is not now under rent, then?

A. It is not.

Q. Who is in possession?

943 A. A man and his wife. His name is Barnard. I do not know what his first name is, and I do not know which is in possession—the husband or the wife.

Q. You claim to exercise the right to rent the property as agents for Governor Shepherd, do you?

A. Oh, I don't make any claims here at all.

Q. Under your power as attorney-in-fact?

A. I have made no attempt to rent it.

Q. Do you or not claim to have that power under instructions from Governor Shepherd?

A. So far as I recollect, we have had no instructions from Governor Shepherd in regard to the matter of renting that house. We have a general power of attorney, given to us the day that he left, which, as I have already stated, would, perhaps, authorize us to take whatever steps as are necessary in regard to that property to conserve his interest.

Q. Mr. Bradley, when were the last rents paid for that property and to whom?

A. I do not know. I have had nothing whatever to do with the payment or collection of rents. I suppose if any rent was paid it was paid to Mr. Shepherd. I have no actual knowledge whatever of any payments of rents.

Q. Since what time have you been in possession or have the premises been under your control?

944 A. I stated that the power of attorney given to us was on the 1st day of May, 1880, I think.

(No cross-examination.)

A. C. BRADLEY.

Subscribed and sworn to before me this 30th day of June, 1880.

EDMUND A. BAILEY, *Examiner.*

Defendants close their testimony.

ANDREW C. BRADLEY recalled on behalf of complainant.

By Mr. TOTTEN:

Q. How long have you been a practicing lawyer in this court, Mr. Bradley?

A. About twelve years.

Q. I want you to state when the terms of our general term begins, and also of the special term, and I hand you the rules of the

court on that subject (handing book to witness). On what days of the month in each year do the terms of the general term begin?

A. The terms of the general term commence, respectively, the first Monday of January, the third Monday of April, and the fourth Monday of September.

Q. Now, state as to the special terms.

945 A. The special terms commence on the first Tuesday of each month in the year except August. There is no court in August.

Q. What business is done in the special term?

A. Well, there seems to be a little confusion as to what is a special term.

Q. At what term is the chancery business done?

A. The chancery business is all done at the special terms, which are specially denominated "special terms" in the rules—that is, commencing on the first Tuesday of every month except August.

Q. When did the special term at which the order of the 26th of July, 1879, was made terminate?

A. I don't know. It may have continued into August, but I do not know; it probably terminated in July.

Q. When did the term held in May end?

A. It ended before the first Tuesday of June.

Q. What is the equity rule in regard to notice? Have you got it before you (referring to rule book in witness' hand)?

WITNESS: Do you want we to read rule?

Q. Have you got it before you?

A. Yes, sir; I have.

Q. Well, I want the examiner to copy it.

A. The rule, I think, requires, in the case of contested motions, two days' notice of motion, and that is the practise of the court.

946 (The rule referred to, being No. 5 of the equity rules of the supreme court of the District of Columbia, is as follows:

"5.

"*Notice of Motion, when Requisite.*

"All motions for rules or orders or other proceedings which are not grantable of course or without notice shall, unless a different day be assigned by a justice of this court, be noticed for the first day of the special term, and a copy of the affidavit or papers upon which said motion is founded shall, together with the notice of motion, be served on the opposite party, if he has appeared, or his solicitor at least two days before the hearing of said motion unless the grounds of said motion are matter of record, in which case it shall only be necessary to refer to such parts of the record as are specified in the notice of motion."

EXAMINER.)

Q. Now, Mr. Bradley, won't you be good enough to state what took place between you and Mr. Fitch in regard to the equity suit

instituted by Mercy Maria Gray—Mrs. Gray? Mr. Fitch has made some statement to the effect that you told him to do something.

947 A. Mr. Fitch has fallen into an error there in his deposition. He states that I came to him and asked him to give the address of Mrs. Mercy Maria Carter Gray, and advised him that it was necessary for him to file this bill in order to protect her interests. That is clearly an error, for my letter book shows that on the 25th day of July, the day after the restraining order was granted, which is referred to in the proceedings, I wrote a letter to Mrs. Gray informing her that this order had been obtained; that it was only a temporary restraining order, continuing until September 2d, and advising her that her interests were at stake, and that it would be well for her to employ some one to look after and protect them here, stating that I had been left by Mr. Shepherd in charge of his interests, and I would do the best I could, but that she should have some one specially employed to look after her interests. Mrs. Gray's bill was filed September 12th.

Q. Is that all? Did you ever have any conversation with Fitch about it?

A. Subsequently to that I saw Mr. Fitch quite frequently. Mr. Fitch and Mr. Lewis Davis both manifested considerable interest in this case, and they both asked me questions about it, and Mr. Fitch desired to know what the result of the application for an in-

948 junction was, and when I informed him as to the result, the refusal of the injunction, I stated to him the ground upon which the court had placed it; that there was an appeal pending in the case, and that as the same difficulty would not be met by Mrs. Gray she, perhaps, would protect her own interests by filing a bill in her own behalf; but after that I had nothing whatever to do with the matter. I did not know who had been employed for some time after the employment was actually made (I believe with Mr. Garnett), and Mr. Garnett came over and asked me a question or two in the case and got some papers from me. I had no further connection with that bill than that.

Q. When was Governor Shepherd's house built; in what year?

A. I think it was built in 1873–'4.

Q. Were you present when Judge MacArthur dissolved the restraining order granted in July? It was dissolved some time in the early part of September, 1879.

A. I was.

Q. What did Judge MacArthur say on that occasion about this original decree in the case, as to its sufficiency?

A. My recollection is that he stated——

949 Mr. JOHNSTON (interposing): On behalf of the trustees I object.

Mr. WILSON: I object because it is not proper in rebuttal and incompetent in general, and, observing the form of Mr. Totten, I notified counsel that on the hearing of the case I shall move to strike it out.

WITNESS (continuing): Stated that, although the decree appeared

to him to be very defective and about as defective a decree as he had ever seen, he would be compelled to refuse an injunction in the case, because an appeal had been taken to the general term, and he was therefore without any jurisdiction in the matter. He further stated that as to whether the trustees would choose to proceed to make a sale upon such a decree he would have to leave to their discretion and judgment. When the order which had been prepared by Mr. Pepper's counsel, refusing the injunction, was handed to Justice MacArthur for signature some statement was made—I think, perhaps, by Colonel Totten—that if he had not any jurisdiction over the case because of an appeal having been taken to the general term, and no jurisdiction to grant an injunction, he did not have sufficient jurisdiction of the case to sign the order refusing the injunction, and the judge held the order upon his desk for
950 some time, hesitating whether to sign it or not; but my recollection is that he did not refuse, and that no request was made of him to have the order show that the injunction was refused because the case was on appeal to the general term.

Q. When this sale was made in October by these trustees was the original suit pending in the court in banc on appeal?

A. It was.

Cross-examination by Mr. WILSON:

Q. You have referred to a letter that you wrote in July to Mrs. Mercy Maria Carter Gray. Will you please produce it and let us see it?

A. Yes, sir. (Witness hands letter book to Mr. Wilson.)

Q. What, if any, advice did you give or suggestion did you make as to the filing of the bill of Mercy Maria Carter Gray?

A. I do not remember any further suggestion than that which I have already mentioned in my direct examination, that I told Mr. Fitch or Mr. Davis (I don't know which) that the court had refused the injunction because of the pendency of the appeal to the general term, and that perhaps Mrs. Gray would be in a better condition to make the application herself, and that we could do
951 nothing at that time, and, as he had manifested a deep interest in the matter and a great desire in behalf of Mrs. Gray that this injunction should be obtained, I made this suggestion to him.

Q. Were you the attorney-in-fact of Mr. Shepherd at the time that the decree was passed on the 12th of May, 1879?

A. No, sir; I was not. Mr. Shepherd went to Mexico in the latter part of the month of June, and when he left he gave me a general power of attorney, and also requested me to look after his interests as well as I could.

Q. When did you first see the decree of May 12th?

A. I think the first time I saw that decree was when this application for an injunction was prepared.

Q. Why did you write the letter of July 25th, 1879, to Mrs. Gray, and what was the purpose of it?

A. The purpose of it is very apparent upon its face; there is no concealment, no purpose back of it.

Q. Was it to aid in preventing the sale of the property?

A. Mr. Fitch, I think, stated to me, in giving me her address—suggested and I think requested of me that I write to Mrs. Gray and suggest to her that she employ some one here to look
952 after her own interests. When I wrote that letter I did not have any idea that the court would do otherwise than grant the injunction.

Q. Why were you interested, as Mr. Shepherd's representative, in seeing that her interests were protected?

A. I was interested in this way: that a sale at that time would have been, as I believed, disastrous both to his interests and to hers, and, inasmuch as she had a second deed of trust and her interests were to be protected, and Mr. Shepherd, I believed, from my conversations with him, desired that her interests should be protected, I wrote to her, advising her as I did in the letter of July 25, 1879, and also, as I have stated, I think upon the suggestion of Mr. Fitch.

Q. Then you did wish her aid in preventing a sale at that time?

A. As I have already stated, I did not believe at the time that her aid was necessary, but that I did believe that the court, upon the papers filed in the case, would, when the application came to a hearing, grant an injunction.

Q. If that was your belief, then there was no occasion for your writing to her at all, was there? If you were confident that the court would grant an injunction there was no necessity for seeking her aid in the matter.

953 A. As I have already stated, I did not seek her aid at that time; the occasion for my writing to her was just as I have stated, and I wish also to state that this is the only communication that I had with Mrs. Gray, either written or oral.

A. C. BRADLEY.

Subscribed and sworn to before me this first day of July, 1880.

EDMUND A. BAILEY, *Examiner.*

Testimony closed.

Adjourned.

EDMUND A. BAILEY, *Examiner.*

Endorsed on cover: District of Columbia supreme court. No. 136. Alexander R. Shepherd, Samuel Cross, Peter F. Bacon, *et al.*, appellants, *vs.* George S. Pepper. Filed October 9, 1886.

Supreme Court of the United States.

OCTOBER TERM, 1889.

No. 136.

ALEXANDER R. SHEPHERD et al.,
Appellants,

vs.

GEORGE S. PEPPER.

BRIEF OF APPELLANTS.

WM. F. MATTINGLY,
ENOCH TOTTEN,
Counsel for Shepherd and his Assignees.

HENRY WISE GARNETT,
Counsel for Mrs. Gray.

LAW REPORTER PRINT, 503 E ST.

Supreme Court of the United States

OCTOBER TERM, 1889.

No. 136.

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vs.

GEORGE S. PEPPER.

BRIEF OF APPELLANTS.

Statement of the Case.

By deed dated June 1st, 1874, Alexander R. Shepherd and wife conveyed to William H. Philip (since deceased) and Andrew C. Bradley, in fee, part of lot 2 in square 164 in this city, in trust to secure to George S. Pepper the payment of Shepherd's note to him for $35,000, dated June 1, 1874, at five years with interest at 9 per cent. per annum until paid, payable semi-annually.

Ten coupon notes were given for the interest payable at a bank in Philadelphia.

The trustees were empowered by the deed to sell the property at public auction in case of default in payment of any of the notes.

The property conveyed by the deed is situated at the corner of K street and Connecticut avenue in this city, fronting 43 feet 9 inches on K street, and extending 80 feet 10 inches on Connecticut avenue.

On March 22, 1875, Shepherd and wife executed a similar deed to Andrew C. Bradley and William F. Mattingly, conveying the same property in trust to secure to Pepper Shepherd's note for $10,000 at five years with interest at 9 per cent., similar coupon notes being given for the interest.

On May 15th, 1876, Shepherd and wife executed another deed of trust to James E. Fitch and Lewis J. Davis to secure Mercy Maria Carter (since married and known as Mercy Maria Carter Gray) his, Shepherd's, note to her for $25,000, with interest at the rate of 9 per cent. per annum, payable quarterly, until paid, with power in the trustees to sell in case of default; recorded in Liber 819, folio 290 of the land records of the District of Columbia. The property conveyed by this deed is described as lot 3 in square 164 at the corner of K street and Connecticut avenue, fronting 43 feet 9 inches on K street and 109 feet ½ inch on Connecticut avenue.

It will be observed that the property conveyed by this deed includes that conveyed by the two previous deeds, to secure Pepper, and in addition thereto the rear portion of the lot fronting about 28 feet on Connecticut avenue. This rear portion is known as sub-lot "A," and is shown on the plat on page 191 of the record.

On November 15, 1876, Shepherd made a general assignment of all his property, including said lot 3, in square 164, to Taylor, Cross and Willard, in trust to secure his then existing unsecured creditors.

One Bacon was subsequently substituted as trustee in the place of Willard and one Bartlett in the place of Taylor, so that the assigners or trustees under this deed were Bacon, Cross and Bartlett.

This deed will be found at page 12 of the record.

Equity Cause, No. 6201.

On April 11, 1878, George S. Pepper, filed his bill in the court below, it being cause No. 6201 in equity, against Alexander R. Shepherd and wife, Andrew C. Bradley, William H. Philip and Taylor, Bacon and Cross (Shepherd's assignees), as defendants. In this bill (Rec. p. 243) Pepper sets out the two deeds of trust of June 1874, and March 1875, to secure him, recorded respectively in Liber No. 754, folio 51 and Liber No. 777, folio 489, of the land records for the District of Columbia (R. 249–252) the deed of assignment by Shepherd, that he is still the holder of said notes to him for $35,000 and $10,000, that several of the coupon interest notes are long overdue and payable, that nothing has been paid on said loans since September 22, 1876, that the property is largely encumbered with taxes, that he has been compelled to pay premiums for insurance and that in consequence of Shepherd's defaults, (R. 245) "he did, in writing, order and request the trustees under said deeds of trust (to secure him) to advertise said real estate for sale, but that said defendant Andrew C. Bradley, one of the trustees under both of said deeds of trust, refused so to do, and his written refusal is annexed hereto, marked Exhibit G. P., No. 4." (This should be Exhibit G. P. No. 6, and is on page 255 of the record and in it, under date of March 14, 1878, Mr. Bradley for reasons therein stated, says I think that under all the circumstances it would not be just to advertise at present.) He avers (R. 245) that the delay in the enforcement of said trusts has prejudiced and is prejudicing his rights: that the interest is increasing daily and taxes accumulating: he fears that the property will not be of sufficient value to repay him the amounts due him and shows from Bradley's letter it would appear that Shepherd proposes to set up as an objection to the sale that the deeds of trust to secure complainant and sought to be enforced *do not cover the entire area of the house*, cutting off about 20 feet of the rear.

He admits the fact, having since the receipt of said letter, looked over the plan of said house, but charges that at the time of the negotiation of the loans, he was informed and believed that the deeds of trust covered the whole of the house and lot, that he had nothing to do with the preparation of the deeds: that they were prepared by Shepherd, his attorney or agent, and that for mistake or omission Shepherd alone is responsible: that at the date of the deeds the house was completed and occupied by Shepherd as a dwelling.

That (R. 246) the part of the house not included in said deeds of trust to secure him is what is known as the picture gallery, and is situated on sub-lot "A," square 164, and he charges that the rear end of about ——— feet, *could be detached without marring or in anywise lessening the value of said property;* and he claims that he is *entitled to enforce the collection* of the claims due him *irrespective of any injury such sale may do the defendant, Shepherd, or any one holding under him; "and in any event he has the right to enforce the sale of so much of said property as is covered by his said deeds of trust."* The prayers of this bill were that a trustee be appointed by the Court in the place and stead of the trustees under said deeds of trust first mentioned, with directions and authority to forthwith execute all the trusts reposed in them respectively by the said deeds of trust; that he may be allowed costs and expenses; and for general relief.

Shepherd, in his answer, describes the construction of the house; says he held a tax title to lot "A"; that he never saw the complainant in his life; that the notes and deeds of trust were prepared by the agents or attorneys of the complainant, and brought to him for execution; and denies that there was any understanding between him and Pepper, touching the quality of the real estate or description of the property to be included in the incumbrances. He charges that the transaction with Pepper having been

made in Philadelphia, the money having been paid there and the contracts to be performed there, the laws of Pennsylvania control, and that under those laws the rate of interest specified in the notes is unlawful and the contracts of no effect except to secure the payment of the original investment with six per cent. interest, and that, if the account should be so stated, he has paid Pepper more money than he is entitled to for interest due on the loans. Other matters are set out not now material.

This cause came on for final hearing, and on May 12, 1879, the Court passed the following:

Decree (R. 264).

"This cause coming on to be heard and having been argued by Counsel and considered by the Court, it is, the 12th day of May, 1879, ordered and adjudged and decreed that the plea and defence of usury be, and the same is hereby overruled and disallowed, and that James M. Johnston be, and is hereby, appointed trustee in the place and stead of Andrew C. Bradley in the deed of trust recorded in Liber —— folio —— of the land records for the District of Columbia, and referred to in the record in this cause. This decree is without prejudice to all other rights of defendant."

By the Court:

MAC ARTHUR,
Justice.

Sale of the Property and Purchase by Pepper.

Under the above decree, Mr. James M. Johnston, (assuming that he was appointed trustee in place of Bradley under deed of trust of June 1, 1874, to Bradley and Philip, recorded in Liber 754, folio 51) and William H. Philip as trustee, by virtue of said decree and deed of trust advertised

(R. 307) the property described in that deed for sale at public auction, on October 23, 1879, and on that date sold the same to Pepper for $50,000, and shortly thereafter executed and delivered to him a deed in fee simple for the same, which was recorded in Liber No. 923, folio 392 of the land records of this District.

Equity Cause No. 7,052 (R. 301).

Thereupon Shepherd, on November 14th, 1879, filed a bill against Philip, Johnston and Pepper (7,052 in Equity), claiming that Johnston and Philip were entirely without authority in advertising and attempting to convey the property, inasmuch as Johnston was not constituted one of the trustees by the deed of trust referred to in the advertisement; and the decree in No. 6,201 Equity did not confer upon nor vest in Johnston any title, trusts or powers under said deed of trust, nor did it substitute him in the place and stead of Bradley under said deed, nor did it remove Bradley from his office of trustee, or divest him of the title, powers and trusts conferred upon him by said deed.

The bill further claimed that the sale was managed solely in the interest of Pepper, and that the price at which it was knocked down to him was grossly inadequate.

Pepper filed his answer (R. 309) December 3, 1879, claiming that the acts of Johnston and Philip as trustees in advertising and selling the property and in conveying it to him were authorized, legal and proper, and that the amount for which it sold was not grossly inadequate.

He also on December 20, 1879, filed a cross-bill (R. 314), in which he refers to the proceedings in the cause and prays that the sale made by Philip and Johnston, trustees, may be decreed to be legal, and the conveyance by the trustees to him be decreed to be valid and effectual to convey to him an unincumbered fee simple title to the property.

He also prayed for a writ of assistance that he might be placed by the Court in the actual possession of the property.

On final hearing the Court, on October 30, 1880, dismissed the bill with costs. Subsequently the opinion of the Court was filed, assigning reasons for the dismissal of the bill, which were that the decree in No. 6,201 was void for uncertainty, and that the alleged title of Pepper through Johnston as trustee was not a cloud on complainant's title. (R. 184.)

Bill In This Cause, No. 7,803.

Under these circumstances, the complainant below, on July 20, 1881, filed his bill in this cause, No. 7,803, setting out the facts substantially as stated above, and averring that that the dismissal of the bill in cause No. 6,201 for the reasons stated in the opinion of the Court was, in effect, an adjudication in Shepherd's favor that the sale to Pepper was void, and that "complainant files this bill in order that an undisputed title to the whole property may be obtained by means of foreclosure proceedings under the order and decree of this Court."

It further avers that Mrs. Gray had actual notice that Pepper and Shepherd intended to embrace in the first and second deeds of trust all the real estate in the third deed of trust in her favor, and he claims that his lien is paramount to that of Mrs. Gray, and ought to be enforced either by reforming the two deeds securing him, or by enforcing his lien as an equitable mortgage prior to any rights of Mrs. Gray.

That said real estate is an utterly inadequate security for the large sums now charged upon it; and that Shepherd is utterly insolvent.

The prayers are for the appointment of a receiver, for the

sale of the entire lot by a trustee appointed by the Court, that the rents and proceeds of sale be first applied to the discharge of the amounts due complainant; and for general relief.

The defendants to this bill were Shepherd and his wife, Mrs. Gray, the trustees under the three deeds of trust, Shepherd's assignees, and two of the creditors under the assignment.

Amended Bill (R. 88).

After Shepherd's answer to the original bill was filed, the complainant on July 18, 1882, filed an amended bill, making the heirs at law of W. H. Philip, the deceased trustee, parties and by stating as follows:

"Complainant is willing to surrender and hereby surrenders, *for the purpose of a resale of said real estate* any title in fee simple which he may have thereto by reason of the deed to him from William H. Philip and James M. Johnston, trustees, recorded in Liber 923, folio 392, of the land records of the District of Columbia; and *for the purpose of reselling the said real estate in this proceeding*, complainant waives any interest claim or title vested in him by the said deed in fee simple and complainant hereby offers to make any conveyance which the Court may decree proper or necessary *to accomplish the purpose indicated.*"

Shepherd's Answer (R. 47).

He admits the indebtedness of $45,000 and $35,000 to Pepper and Mrs. Gray respectively.

Claims that Pepper has increased the amount he claims some $4,500 by compounding interest at 9 per cent.

Avers that the bill in No. 6,201 was a bill to foreclose said deeds of trust to secure Pepper by the order and direction of the Court.

Denies that the omission of lot "A" was an accident or fraud on his part, or on the part of his agents and avers that it was not done by his suggestion or procurement; that said deeds were prepared by real estate agents to whom the whole business of making the loans and preparing the papers had been entrusted by Pepper, and who were his agents in the matter; and denies that Pepper has the right to have said deeds corrected so as to include lot "A."

He denies that the omission of lot "A" seriously impaired Pepper's security and refers to his averment in his bill in No. 6,201 to that effect, and to his sale under that decree, purchase of the property, and its conveyance to him.

Admits that he executed the deeds of trust in the belief that the whole property covered by the house was embraced in them.

Denies that he has perfected his title to lot "A" by buying in adverse claims; that he paid for the same out of his own money, and that the title is in him or some friend as trustee for him, and avers that plaintiff is not entitled to any further answer.

Denies that the encumbrances and liens on the property amount to $120,000 and that plaintiff's statement of account filed with his bill is correct.

Denies that he is insolvent, and avers that since his assignment he has settled with creditors debts amounting to about $1,200,000, and denies that his unsecured debts amount to $310,000, or anything like that sum.

Denies that plaintiff is entitled to the rents.

Avers that the whole subject matter of this bill is embraced in said cause, No. 6,201, and that plaintiff must seek such relief in that cause.

Answer to Amended Bill (R. 101).

Denies that the property is insufficient security for the debt due plaintiff.

Avers that plaintiff's offer to surrender his interest is no actual surrender or waiver of any right.

Appointment of Receiver (R. 36).

December 1, 1881, the Court by decree appointed a receiver to collect the rents of the property.

Answer of Mrs. Gray (R. 26).

She denies the averments of the bill in respect of any knowledge or notice that the prior deeds of trust were intended to cover the entire lot or belief on her part that they did so; and avers the truth to be that at the time the deed of trust was given to secure her, she was informed and believed that the two prior deeds covered only that portion of the lot described in them and that her deed was a first lien on the remaining part of lot 3, and that she loaned her money relying on this information, which was true in fact.

Avers that it would be greatly against her interest to have a sale made of said lot 3, and that she does not desire a sale of said property.

In answer to the amended bill (R. 97) she avers that the property described in Pepper's deeds is amply sufficient to secure the amount due him and at a fair sale would realize more than sufficient to pay him.

Proofs were duly taken on both sides, the records in cause 6,201 and 7,052, being offered in evidence by the complainant. (R. 180, 190).

Shepherd's Petitions in re—Personal Decree for Deficiency (R. 142).

On the final hearing, Pepper's counsel claimed that he was entitled to a personal decree against Shepherd for any

deficiency in the proceeds of sale to pay the debt, whereupon Shepherd filed two petitions stating that he was led astray as to the real purpose of the bill, if its purpose partly was to seek a personal decree against him and was thereby prevented from pleading the statute of limitations to such personal liability as he would have done had the bill presented such claim for relief and that he was taken by surprise when it was suggested at the hearing of the cause for the first time that complainant was entitled to such decree.

That on May 20, 1882, complainant brought suit against him on the law side of the Court on the original and coupon interest notes referred to in the bill, being action No. 23,732 on the law docket which action was still pending, and that said notes were barred by the statute of limitations. He prayed for a hearing upon the right of complainant to a personal judgment; that he might be allowed to take proof as to the fact of said pending action at law; that complainant be required to elect between said pending action at law and his claim for a personal decree and for general relief, &c.

These petitions were overruled by the Court, (R. 144) and the decree passed at special term.

Decree in Special Term (R. 145).

The decree requires Shepherd to pay or bring into Court to be paid complainant by July 1, 1885, $45,000 the amount of the two original notes with interest at 9 per cent. $12,600 the amount of the coupon interest notes with interest on each one from maturity at 6 per cent. and in default thereof appoints trustees to sell the whole of lot 3.

The trustees are ordered before July 1st to take proofs before the auditor as to the relative values of the part of lot 2 in Pepper's trusts and lot "A."

It directs that the net proceeds of sale which shall appear to the Court to represent the value of part of lot 2 be applied to complainant's claim and of lot "A" to the claim of Mrs. Gray, as well as any excess from lot 2.

That the net rents in the hands of the receiver shall await the further order of the Court.

It then gives a personal decree against Shepherd for any deficiency.

Decree in General Term (R. 150).

On appeal to the Court in General Term, the decree at Special Term was affirmed with the following modifications, viz., the enquiry to ascertain relative values was directed to take place after the sale.

That if Mrs. Gray's claim should be satisfied otherwise than by the sale decreed, the entire proceeds of sale should go to Pepper.

The balance in the hands of the receiver should be paid complainant on any balance due him after application of proceeds of sale; and the orders of the Court in dismissing the two petitions of Shepherd were in express terms affirmed.

From this decree the defendant, Shepherd, his trustees under his assignment of November 15, 1876, and Mrs. Gray appealed in open court to this Court and the appeal was allowed. (R. 152.)

Assignment of Errors.

The Court below erred.

1st. In not dismissing the bill of complaint.

2d. In not deciding that the complainant's remedy was in cause No. 6,201.

3d. In not decreeing that the proceedings in cause No. 6,201 were a bar to this suit.

4th. In decreeing the sale of the whole of lot 3.

5th. In affirming the order of the Court in Special Term dismissing the two petitions of Shepherd filed in March, 1885.

6th. In passing a personal decree against Shepherd for any deficiency.

7th. In decreeing that the rents in the hands of the receiver should be paid to complainant.

BRIEF OF ARGUMENT.

The proceedings in cause No. 6,201 should estop the complainant from maintaining the bill in this cause and be a bar to it.

The only difference between that cause and this is, that in No. 6,201, Pepper did not make Mrs. Gray and her trustees and the beneficiaries under Shepherd's assignment parties defendants; that he elected to take the property described in his deeds of trust and sought no relief against lot A.

Mrs. Gray was not a necessary party to the first suit, and the decree is not for that reason any less effective.

Story's Eq. Pl., Sec. 193.
40 Cal., 234, Carpentier *vs.* Brenham.
24 Wis., 123, Board of Sup. *vs.* M. P. R. R. Co.
101 U. S., 848, Howard *vs.* R. R. Co.

The fact that Mrs. Gray is a party to this suit does not affect the question of the estoppel of the former suit as between Shepherd and his trustees and Pepper.

24 How., 241, Thompson *vs.* Roberts.

Neither Alexander nor Barker, the two defendants under the Shepherd assignment, had any interest at the time the bill was filed. Alexander is dead and the bill was dismissed as to him, and the record shows that both of them had been settled with by Shepherd before that time. So that it leaves the case simply one in which the same facts are presented and the same relief prayed as in cause No. 6,201, except that Mrs. Gray the junior incumbrancer is made a party and relief is sought against lot "A", which he in the former suit in

express terms claimed the right to omit, and which was so decided by the Court.

As to lot "A," omitted from complainants deed, he was not entitled at the time of filing this bill, to correct those deeds or to claim it. The record shows that he had made his election to take under his deeds of trust according to their description with full knowledge of the alleged mistake; and that he has indicated this election by several successive steps during a period of three years from 1878.

1st. By ordering a sale under the trust deeds.

2d. By prosecuting cause No. 6,201, in which he claimed the right to enforce the sale of the property described, notwithstanding the alleged mistake.

3d. By causing a sale to be made of the property as described in his deeds of trust, buying it in, taking a deed of it and having the deed recorded.

4th. By insisting upon his right to the property so purchased by him, and by filing a cross-bill in cause No. 7,052 for the purpose of obtaining a writ of assistance from the Court to put him into possession of it.

These decisive acts, done with knowledge, determined his election, and confined him to the course of action adopted.

Bigelow on Estoppel, 503, 514.
8 Ohio, 529, Renwick *vs.* The Bank.
27 N. Y., 310, Rappelle *vs.* Stewart.
74 Pa. St., 300, Duff *vs.* Wyncoop.
7 Heisk., 612, Swansen *vs.* Tarkington.
98 Mass., 305, Tuita *vs.* Stevens.
93 U. S., 55, Grymes *vs.* Sanders.

In this latter case this Court said: "When a party desires to rescind upon the ground of mistake or fraud, he must upon discovery of the facts, at once announce his purpose and adhere to it. If he be silent and continue to treat the property as his own, he will be held to waive the ob-

jection, and will be conclusively bound by the contract, as if the mistake or fraud had not occurred. He is not permitted to play fast and loose."

Under the plainest principles of law applicable to the reformation of a deed on the ground of mistake, the complainant, in view of his previous knowledge and acts done, could not lawfully be permitted when this suit was brought to maintain any such bill. He might have made the claim in cause No. 6,201, but in express terms did not choose to do so, and claimed the right to sell the property as described in his deeds of trust, notwithstanding he expressly sets up the alleged mistake in that cause. The decree in that cause settles the matter; rights and demands cannot be split up and tried piecemeal.

57 Ill., 244, Rodgers *vs.* Higgins.

18 How., 420, Stockton *vs.* Ford.

Complainant has no Right to Relief against Lot "A."

We have shown above that he had no right under the circumstances, to have the deed reformed.

The responsibility for the description in complainant's deed is not important to the consideration of this case, but the deposition of complainant and his letters filed as exhibits with his deposition, as well as other depositions made evidence in the cause, show plainly that the mistake occurred in the preparation of the deeds by his own agents, intrusted by him with the duty and responsibility of such preparation, and that Shepherd was as innocent of such misdescription as Pepper claims to be.

Mrs. Gray, who holds the first lien on lot "A," is satisfied that it is best for her interests that it should not be sold, and objects to a sale of it. Complainant introduced no testimony to controvert the denial of her answer that she had no knowledge or notice of any mistake in Pepper's deeds, but took her security on the faith of its being a first

lien on lot "A," and the decree of the court below is to the same effect.

That the property would sell to better advantage as a whole is no legal reason which would give the Court the right and power so to decree against the objections of those interested in lot "A."

31 Md., 444–5, McLaughlin *vs.* Barnum.

In this case it appears that David Barnum, the testator, was the owner of what was known in Baltimore as the City Hotel. Adjoining it was a small lot, the title to which was in his wife, but the buildings on which comprised an integral part of the hotel and were indispensable to its use as such. Barnum by his will devised "said City Hotel, buildings and grounds" to trustees for the benefit of certain parties. McLaughlin, the lessee of the hotel and one of the co-owners, bought this lot of Mrs. Barnum after her husband's death, and by further improvements bound it still more closely to the hotel property.

The owners under the will filed a bill for the sale of the whole property, claiming that Mrs. Barnum, having accepted other benefits under the will, had elected to stand by it, and that the whole property passed under the devise; that the lot had become incorporated with the hotel, and that the sale of the latter without it would be necessarily at a great sacrifice, and that McLaughlin was to be considered as having purchased under the circumstances, as trustee for all the owners. The Court decided against all these claims and decreed the sale of the hotel without the lot. The Court, in its opinion, says:

"A court of equity ought not to allow property to be sold with a cloud upon the title which it can remove, and should see it so offered in market as to pass a clear title to the purchaser, and realize its full value to the parties interested, but to accomplish this, legal rights cannot be infringed, nor parties be compelled to part with property in

which the parties to the cause asking for a sale have no legal or equitable interest. Such is the case here. The holders of the legal title are standing upon their rights and resisting a sale of this lot. Those rights must be respected, and if loss results to others as well as themselves, from a refusal to sell, it is a loss which the courts have no power to prevent."

What is this case?

The complainant suggests that it is a foreclosure proceeding, but it is not such in purpose, substance or effect.

He comes into Court claiming to hold the legal title to the property described in his deeds of trust, acquired by him as purchaser, at a sale made under one of them. He does not admit nor concede that his title is void, but says that Shepherd has always claimed it to be, and for himself says (R. 88) "he is willing to surrender, and hereby surrenders, *for the purpose of resale* any title in fee simple under deed from Philip and Johnston, trustees, recorded in Liber 923, folio 392, and *for the purpose of reselling said real estate in this proceeding*, complainant waives any interest, claim or title vested in him by said deed in fee simple, and hereby offers to make any conveyance which the Court may deem proper or necessary *to accomplish the purpose indicated*."

His counsel, Mr. Johnston, who has nothing to surrender, is much more liberal. He says in his answer (R. 110), "I am willing to make any conveyance or transfer that the Court may require in order that I may be thus relieved. This offer is not *conditional* on any theory of adjustment or decision by the Court, but is an *absolute* tender of the whole of whatsoever title or interest may be vested in me."

If anything was needed to show that Pepper's offer was conditional and not absolute, this shows it.

Pepper virtually says to the Court, I will make a bargain with you, I have the legal title which I will submit to your disposal provided you will grant me the relief I desire: if you wont do so, then I will hold on to what I have. He does

not give the Court jurisdiction of the entire case and therefore should not be heard.

47 N. H., 71, 80, Eastman *vs.* Amoskeag Co.

35 Eng. L. and E., 518, Prother *vs.* Phelps.

The court below erred in passing a personal decree against Shepherd for any deficiency; and in denying his petitions filed in that behalf.

1st. Pepper is not a mortgagee seeking foreclosure, and can not be so considered, claiming as he does to hold the legal title under a foreclosure proceeding, sale, and deed to him.

2d. There is no averment in the bill of any such liability and no prayer asking any such relief.

3d. When complainants counsel claimed on the final hearing, for the first time, that he was entitled to such relief, it was a surprise to the defendant and he at once petitioned the Court, (R. 142), for leave to show that on May 20, 1882, the complainant sued in the same Court at law on the notes described in the bill; that the action at law was still pending; and prayed that the complainant might be compelled to elect between the action at law and the claim so made at the hearing. He also prayed leave to interpose the statute of limitations to such relief, by way of plea or amended answer, alleging that all of said notes were then barred by the statute, so far as a right to a personal judgment was concerned, all of which the Court overruled (R. 144) and the decree in General Term affirmed this ruling.

The defendant had the right to interpose the objection of the statute at that time, and to claim that the statute ran up to the time, when, at the hearing, the new claim to a personal decree was first made.

Angell on Lim., sec. 330.

10 B. Mon., 84, Dudley *vs.* Prior.

3 Ire., ch. 535, Christmas *vs.* McIntyre.

6 Pet., 61-64, Miller *vs.* McIntyre.

100 Pa. St., 583, Miller *vs.* Bestor.

While a mortgagee has the right to sue at law and foreclose in equity at the same time, yet he has not the right to a personal decree in equity for what he is claiming judgment at law, and he should at least have been compelled to elect which remedy he would pursue. In enforcing the lien of a mortgage the limitation in this District is twenty years; in an action at law on the mortgage debt it is but three years. The case of Dodge *vs.* F. S. & T. Co., 106 U. S., 445, was a clear case of foreclosure, and the bill prayed the specific relief. It was a case within the express provisions of sec. 808 of the Rev. St. D. C., and this case is not.

The Court erred in decreeing the rents in the hands of the receiver to be paid to Pepper.

1st. We again wish it to be remembered that this is not a foreclosure of a mortgage.

2d. It certainly is not such as to lot "A," and he can have no claim upon the proportion of the rents from that part of the property.

3d. A party secured by a deed of trust has no interest in the land itself, and the rents not being granted he has no right to a receiver.

12 How., 98, Wilson *vs.* Lagow.

4th. Complainant under his deeds of trust had no right to the possession of the property upon default and no right to the rents and profits after default. His rights are specifically defined and limited by the contract, and consist solely in the sale of the property and the appropriation of the proceeds to the satisfaction of the debt.

36 Mich., 364, Wager *vs.* Stone.
91 U. S., 617, Gilman *vs.* Tel. Co.
103 U. S., 143, R. R. Co. *vs.* Schutte.
107 U. S., 392-3, Koontz *vs.* Omaha Hotel Co.
111 U. S., 242, Teal *vs.* Walker.

In the case of Grant *vs.* the Ins. Co., 121 U. S., in which

this Court sustained the action of the Court below in appointing a receiver in the case of a foreclosure of numerous mortgages, is was based expressly upon the fact that the property was going to ruin and decay, and that it was proper and necessary for the Court to take possession of the property in order to preserve it. No such necessity is pretended to have existed in this case, the bill showing on its face (R. 9) that the property was in possession of the Chinese Minister as tenant.

We submit that the decree below should be reversed and the bill dismissed, with directions to the receiver to pay over to Shepherd and his trustees the rents in his hands.

WM. F. MATTINGLY,
ENOCH TOTTEN,
Counsel for Shepherd et al.
HENRY WISE GARNETT,
Counsel for Mrs. Gray.

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Supreme Court of the United States.

OCTOBER TERM, 1889.

ALEXANDER R. SHEPHERD *et al.*, *Appellants,*

vs.

GEORGE S. PEPPER.

No. 136.

Additional Brief for Appellant.

This additional brief is made for the purpose of presenting to the court additional objections to the decree appealed from, and additional assignments of error. The errors assigned, now, are as follows, to wit :

Assignment of Errors.

The court below erred :

1. In not dismissing the bill of complaint ;

2. In not deciding that the complainant's remedy was in equity cause No. 6,201 ;

3. In not deciding that the complainant's remedy was in equity cause No. 7,052 ;

4. In not decreeing that the proceedings in equity cause No. 6,201 or those in equity cause No. 7,052, or in both, constituted a bar to this suit ;

5. In decreeing the sale of the whole of lot 3 ;

6. In affirming the order of the court in special term, dismissing the two petitions of Shepherd, filed March, 1885;

7. In passing a personal decree against Shepherd;

8. In decreeing that the rents in the hands of the receiver should be paid to complainant.

9. In decreeing that the debt should draw interest, subsequent to the date of the decree, at a rate greater than six per centum per annum.

The rate of interest on all judgments or decrees of the court below is fixed by law at six per centum per annum. This decree (145) provides that the debtor shall pay compound interest until the debt shall have been paid; nine per centum is charged on the principal sums and six per centum on the accrued interest. Section 713, R. S., relating to this District, is in the following words:

> "The rate of interest upon judgments or decrees, and upon the loan or forbearance of any money, goods or things in actions, shall continue to be six dollars, upon one hundred dollars for one year, and after that rate for a greater or less sum, or for a longer or shorter term, except as provided in this chapter."

Sec. 829, on the same subject is in the following words, to wit:

> "Upon all judgments rendered on the common law side of the court in actions founded on contracts, interest at the rate of six percentum per annum shall be awarded on the principal sum due until judgment shall be satisfied, and the amount which is to bear interest and the time from which it is to be paid shall be ascertained by the verdicts of the jury sworn in the causes."

Section 714 authorizes parties to contract in writing for the payment of interest at the rate of ten per centum.

It will be observed that the decree by its terms fixes the amount of each of the debts due from the defendant and then says that such sums are "*hereby decreed to be due and payable by him to the complainant with interest*," &c., &c.; this is the formal language of a judgment; almost the same language is employed in reference to the accrued interest. At the end of the decree (148), the court undertook to render a personal judgment against the defendant, and decreed that if the net proceeds of the sale should prove insufficient to discharge the claims as before described, then that—

> "The complainant shall have and recover of the said Alexander R. Shepherd whatever amount may remain due of the said claims *hereinbefore decreed to be due by the said Alexander R. Shepherd to the complainant*, after the application thereto of the said net proceeds of sale, and shall have execution therefor as at law." (148.)

This decree ascertained the amount of the debt still due, and declared and fixed the rate of interest thereon, and thereafter the debt drew interest *by virtue of the decree, and not by virtue of the terms of the contract.* The contract was merged in the decree.

White vs. *Hoffaker*, 27 Ill., 349;
Aldrich vs. *Sharp*, 3 Scammon, 263.

W. F. MATTINGLY,
ENOCH TOTTEN,
For Appellant.

FILED
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IN THE

Supreme Court of the United States.

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No. 136.

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Statement of Case.

On June first, 1874, the appellee, George S. Pepper, loaned to the appellant, Alexander R. Shepherd, $35,000, for which amount Shepherd executed and delivered to Pepper his promissory note, payable at five years after date with interest, and, also, ten coupon notes for the semi-annual instal ments of interest on the said principal note from its date to maturity. (Rec., 180–1.) On the 22d of March, 1875, Pepper loaned to said Shepherd the further sum of $10,000, for which amount Shepherd executed and delivered to him his promissory note, payable at five years from date, and, also, ten coupon notes for the semi-annual installments of interest upon that principal note from its date to maturity. (Rec., 182–3.)

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At the time these loans were made, Shepherd claimed to own, and tendered and agreed to give, as security therefor, the land and improvements situated at the northeast corner of Connecticut Avenue and K street, in Washington City, District of Columbia, the same being a part of square No. 164, fronting 43 feet and 9 inches on K street, and 109 feet and ½ inch on Connecticut Avenue, containing 8,466.22 square feet, and known as lot No. 3 of Shepherd's subdivision of lots in square No. 164. (See Plat., Rec. 192.) The improvements, then about completed, covered nearly the whole of this lot, the portion not so covered being enclosed and used in connection with the house. It was the intention of both the parties, Pepper (see his testimony, Rec., pp. 204, 293) and Shepherd (see his testimony, Rec., pp. 289, 348, 351), that this residence property, in its entirety, should be included in the deeds of trust to secure these loans, and Pepper would not otherwise have made the loans. (Rec., 205.)

Under these circumstances, and with this understanding between the parties, the appellant, Shepherd and his wife, executed and delivered the deed of trust, dated June 1, 1874, to Philip & Bradley, trustees (Rec., 246), to secure the first of these loans and the one dated March 22, 1875, (Rec., 249) to Bradley & Mattingly, trustees, to secure the second loan.

At the time these loans were made Pepper was (and still is) a resident of Philadelphia, Pa. The loans were negotiated and closed by Kilbourn & Latta, then real estate and loan brokers in Washington, D. C., and the deeds of trust are in the handwriting of a clerk of that firm, and were prepared in their office. (Rec., 335.)

As a matter of fact, those deeds do not embrace all of the land hereinbefore described and intended, by both Shepherd and Pepper, to have been included therein. On the contrary, there is omitted from each deed that portion of said sub lot 3 fronting 28 feet 2½ inches on Connecticut avenue, by the depth containing 2,656 square feet. On this land a portion of the building, including the coal vaults, laundry, servants' apartments and a portion of the parlor, or gallery, was then actually constructed. The land so omitted was formerly known as lot A, in a previous subdivision of lots in square No. 164, the balance of what is now sub-lot 3 being part of lot 2 in such former subdivision (see plat, Rec., 191), and being the part now embraced in the said deeds of trust. The effect of this omission, by misdescription, was to give the mortgagee a frontage of about 80 feet only, on Connecticut avenue instead of 109 feet, and to exclude a part of the house and necessary appurtenances. So that the two deeds of trust mentioned actually cover part of sub-lot 2 instead of the whole of sub-lot 3, as intended by all the parties.

The testimony of Mahlon Ashford, the examiner of titles, shows how, in their anxiety to consummate these loans and earn a commission, the firm of Kilbourn & Latta became parties to this misdescription, and perpetrated this wrong. (Rec., 377.) Learning, through this examination of title, that Shepherd's title to the rear portion of sub-lot 3, referred to (sub-lot A in plat,) (Rec., 191) was defective, that portion, or sub-lot A, was, by these brokers, deliberately omitted from the deeds of trust without notice to or knowledge of Pepper or Shepherd. (Rec., 274.)

Shepherd paid interest on the first of these loans only to June 1, 1876, and on the second only to September 22, 1876, since which time no interest has been paid upon either. (See Shepherd's test'y, Rec., 289.) By the deeds of trust Shepherd covenanted to keep up insurance on the property to the extent of $35,000, (Rec., 248–251), but has paid no insurance premiums since prior to April, 1878, which premiums Pepper was compelled to pay (Rec., 198, 229), and which payments, by the terms of the trust became a part of the debt thereby secured. (Rec., 248, 251.) Shepherd also defaulted in payment of taxes as early as 1877, and has paid none since. For this reason Pepper has since been compelled to pay about $3.500 in taxes, to preserve the security. (Rec., 227, 228.)

Under this state of facts, no interest, taxes, or insurance premiums having been paid by Shepherd for nearly two years, and Shepherd having become insolvent, and having made, November 15, 1876, an assignment to Taylor, Bacon and Cross of all his property for the benefit of creditors, Pepper directed Bradley & Philip, trustees under the first deed of trust, to sell the real estate under that deed. On March 14, 1878, Bradley responded as follows (Rec., 255):

"A. C. BRADLEY,
"ATTORNEY-AT-LAW.

WASHINGTON, D. C., *March* 14, 1878.

"GEO. S. PEPPER, Esq.,

"DEAR SIR: I have received your order of March 6,1878, calling on me as trustee to advertise and sell Mr. Shepherd's house, under a deed of trust. Mr. Philip has showed me the deed of trust.—My first acquaintance with it, and communicated your in-

structions to him. Upon referring to Mr. Shepherd, I am informed that he can pay the interest by July, perhaps earlier, and that the trust does not cover the entire area of the house, cutting off about twenty feet of the rear.

The times are very unpropitious for the sale of any property, especially so valuable a piece as the one covered by the trust, and I think that under all the circumstances that it would not be best to advertise at present.

Yours respectfully,

A. C. BRADLEY."

Pepper, being otherwise remediless, on April 11, 1878, filed his bill in equity against Shepherd and against Bradley & Philip, trustees, under the first deed, and Bradley and Mattingly, trustees, under the second deed, and Taylor, Bacon and Cross, the trustees under the deed of assignment, the same being equity cause No. 6,201, of the Supreme Court of the D. C. (Rec. 243). This bill set out the two deeds of trust, the non-payment of interest, taxes and insurance premiums, the written refusal of Bradley, trustee, to sell as requested, and prayed that another trustee be appointed because of Bradley's refusal to act. (Rec. 246).

Shepherd answered this bill resisting a sale of the property covered by the deed of trust except in connection with the rear lot (the omitted portion, or sub-lot A.) (Rec. 260). He also set up that his contract with Pepper was usurious and that Pepper's "interests and rights in regard to said property are "subordinate to those of the subsequent incumbrances "hereinbefore named, and that before any sale can be "made of said property the rights and interests of all "creditors in and to said property ought to be ad-

"justed." (Rec. p. 262). The encumbrancer referred to was one Mercy M. C. Gray, who held a deed of trust from Shepherd to Lewis J. Davis and James E. Fitch, trustees, subsequent in date to the two deeds given to secure Pepper, but embracing the whole of said sub-lot 3 (including the portion known as sub-lot "A" omitted from the deeds given to secure Pepper), and given to secure an alleged indebtedness from Pepper to her of $35,000. (Rec. 260-261.) This equity cause No. 6,201, was heard on bill, answers and testimony, and resulted in the following decree (Rec. 264):

> "This cause coming on to be heard and having been argued by counsel and considered by the court, it is, this 12th day of May, 1879, ordered and adjudged and decreed that the plea and defense of usury is hereby overruled and disallowed, and that James M. Johnston be and is hereby appointed trustee in the place and stead of Andrew C. Bradley in the deed of trust recorded in Liber , folio , of the land records for the District of Columbia, and referred to in the record in this cause. *This decree is without prejudice to all other rights of defendant.*
>
> *By the Court*:
>
> MACARTHUR, *Justice*."

[NOTE.—The words in italics were written in the decree by MacArthur, Justice. This decree is inaccurately printed in the Record, p. 264; see Rec., p. 4.]

After some delays, caused by motions, appeals and other proceedings in that cause, the real estate, as described in the deeds to secure Pepper was, on October 23, 1879, offered for sale, at public auction by

Philip and Johnston (the latter being the substituted trustee), and was bought in for Pepper at the price of $50,000, subject to arrears of taxes amounting to about $2,700. Philip and Johnston, as trustees, subsequently, conveyed said real estate to Pepper in pursuance of said sale.

Thereupon, an original bill was filed by Shepherd, being cause No. 7,052, in said court (Rec., 301), for the purpose of setting aside that sale and of having the deed cancelled as a cloud upon the title.

The grounds of attack were, (1), that the sale was for an inadequate price and (2), that Philip and Johnston, trustees, were entirely without authority in the premises in advertising and attempting to convey said land, inasmuch as said Johnston was not constituted one of the trustees by said deed of trust referred to in said published notice, and said decree, (*i. e.* the decree in cause No. 6,201 Equity), "did "not confer upon or vest in said Johnston any title, "trusts or powers under said deed of trust, nor did "it substitute said Johnston for and in the place "of Andrew C. Bradley, under said deed of trust, "nor did it remove said Bradley from his office as "trustee under said deed of trust or divest him of the "title, powers and trusts conferred upon him there-"by." (Rec., 301, 302.)

Pepper, and Philip and Johnston as trustees, answered, and Pepper filed a cross-bill, with leave of the court. The cause was heard upon bill, answers, cross-bill and testimony; and on the 30th of October 1880, a decree was entered dismissing the bill (Rec., 323), and the following opinion of the justice who heard the cause was filed December 24, 1880. (Rec., 184.)

"I am of opinion that the decree in question in this case is inoperative and void for uncertainty. It purports to substitute a trustee in one of two deeds mentioned in the pleadings, without designating which one of them. It is true that it can be inferred from the comparative effects of the substitution in the one or the other case: that the court was not likely to intend to substitute Mr. Johnston for Mr. Bradley in the deed which conveyed only an equitable title; but I do not think that I am at liberty to explain and give certainty to the decree by reference to such considerations. It has been suggested that a decree may be explained by reference to the pleadings on which it is based, and this undoubtedly may be done in a proper case, but I do not find that the uncertainty of the decree in this case can be cleared up in that way. *It follows that if the decree is uncertain on its face the alleged title of Pepper through Mr. Johnston, as substituted trustee, is not a cloud upon the title of the complainant, and, consequently, this court can not take jurisdiction to grant the relief prayed; therefore,* the decree must be that the bill be dismissed.

JAMES, *J.*"

It will be observed, that the decree standing alone is a decree against Shepherd, dismissing the bill on the merits, whereas, in fact, as shown by the opinion, it was a dismissal for want of jurisdiction, the court holding that the decree in 6,201, equity, was by reason of the errors therein, void for uncertainty, and that the deed from Philip and Johnston was therefore so obviously null and void on its face that it constituted no cloud on the title.

The attention of the court is especially invited to the situation of affairs and the relative positions of the parties at this point of time.

The appellant, Shepherd, was in possession of the real estate; he was indebted to Pepper for the entire principal, $45,000, which was all overdue; about $20,000, for interest and for over $3000 of taxes and insurance premiums upon said real estate, actually paid by Pepper, and Shepherd was himself insolvent. Shepherd wholly refused to pay and publicly announced in violent language that he would not pay this debt. (Rec. 403.)

The appellee, Pepper, after passing through two harrassing and expensive chancery causes, and having this valid and unsatisfied claim of nearly $70,000 against Shepherd, found himself in possession of two defective deeds of trust embracing but a portion of the security agreed to be given; with a trustee in each hostile to him, who not only refused to act but was actively impeding the sale as Shepherd's attorney in fact under a written power of attorney to him (Rec. 360, 361, 265, 266), and with the deed from Philip and Johnston, trustees, declared by the court to be so utterly null and void that it not only passed to him no title but did not even cast a shadow upon Shepherd's title.

In this state of affairs, the bill in the present cause, No. 7,803, resulting in the decree here appealed from, was filed.

That bill is filed by Pepper against Shepherd and his wife, Mrs. Gray, James E. Fitch and Lewis J. Davis, (trustees in the deed of trust securing Mrs. Gray); A. C. Bradley and W. F. Mattingly, trustees; James M. Johnston, trustee; Bartlett, Bacon and Cross (trustees in the deed of assignment), and Alexander and Barker, two of the creditors secured by said deed of assignment and as representatives

of that class of creditors, under the rules of practice of the supreme court of the District of Columbia.

That bill set up all the proceedings, averments, and facts hereinbefore detailed in this statement of facts. In addition to this, it set out, among other things, the following circumstances: That defendant, Alexander R. Shepherd, was a resident of the Republic of Mexico; the details of the indebtedness then due to complainant; that the understanding between Pepper and Shepherd was that all the real estate covered by Shepherd's residence, and all the land appurtenant thereto and connected therewith, were to be included in said deeds of trust, and that Pepper made his loans on the belief that said deeds were correctly drawn in that way, and that otherwise he would not have loaned any money. (Rec. 67.) The bill next avers, on information and belief, that Mrs. Gray was a purchaser with notice of Pepper's said agreement and rights, and that, therefore, complainant's equitable mortgage on the rear lot, A, is paramount to Mrs. Gray's deed of trust thereon. The bill further alleges, that long after he made the said loans, complainant discovered that Shepherd had only a tax-title to sub lot A, and that said Shepherd has, since that time, bought in the proprietary title thereto, which should now enure to the benefit of complainant and of said Gray. Notwithstanding that the deed to that proprietary title made to Shepherd, or some friend of his for his use, is fraudulently withheld from record. (Rec. 7-8.) The said bill further sets out the large sum due by Shepherd to Pepper; that Shepherd neglects and refuses, and for many years has refused entirely to pay any interest, taxes, or insurance premiums, to the great danger of

the property, notwithstanding that he is receiving large rents from said property. The bill next alleges that the said sub-lot 3 can not be sold for enough to pay the specific liens, and the said encumbrances are rapidly accumulating thereon; that Shepherd is insolvent, and both unwilling and unable to make good any deficiency thus arising.

After referring to cause No. 7052 and the accompanying opinion of Judge James, the said bill in 7803 proceeds as follows: "As it appears by the said "opinion of the court that the said decree" (in 6201, equity,) "did not give to the said Johnston any "power to sell, said decree was in effect an adjudica-"tion upon and favorable to the averments in said "Shepherd's bill of complaint in said court; that "said sale was made without authority, and that the "deed by Philip & Johnston was null and void; and, "as said Shepherd has always averred and insisted "that said decree was void and said sale a nullity, "and to the end that said lot 3 of Shepherd's sub-"division may be sold as a whole, the complainant "files this bill in order that an undisputed title to the "whole property may be obtained by means of fore-"closure proceedings under the order and decree of "this court." (Rec., 6 and 7).

The bill, therefore prayed, in substance, for a Receiver to collect the rents; for discovery as to the actual holder of the proprietory title to sub lot A; for an injunction; for the appropriation toward the discharge of complainant's debt of the funds collected by the said receiver; and "that a trustee or trustees "may be appointed by this court to sell the whole of "lot 3, in A. R. Shepherd's subdivision of square "numbered one hundred and sixty-four with the im-

"provements thereon." The bill, also, contained a prayer for general relief.

The defendant, Alexander R. Shepherd, answered in substance, as follows: (Rec., 47.) He admits his indebtedness on the notes for $35,000 and $10,000 but says he does not know the exact amount of interest. (Rec., 47, 49.) He avers that the bill in cause 6201, was to foreclose, by and through the court, the two deeds of trust; he denies that the court dismissed cause No. 7052 for want of jurisdiction, and says that in that cause Pepper "*prayed for an injunction and receiver, and his right to such relief was adjudicated in said cause*" (R., 48); he avers that the mistake in description was without his knowledge or procurement and was made by the brokers, who were Pepper's agents, and that he signed the deeds without noticing this omission of sub-lot A; he admits that he executed the deeds in the belief that they included this sub-lot A.

He avers that in cause 6201 Pepper sought to sell the land actually embraced in his deeds, and that he has not attempted to correct those deeds until this suit, and has had sold at trustee's sale and bought in the land so described (49). He asserts that Mrs. Gray's lien on this rear lot A is paramount to Pepper's. He denies that he has bought in the adverse title to lot A, or paid for the same, or that the title had been conveyed to him or a friend for him, and denies Pepper's right to discovery in respect thereto. He denies his insolvency and says he has acquired property that will much more than enable him to pay his debts; that he has partly paid his creditors, and that the remaining unsatisfied judgments are small, and some are contested. He denies that

Pepper has any right to the possession of the property or to have a receiver appointed to collect the rents, and says: "Nor have the trustee in said deeds any right to the possession of said property, nor has complainant any interest in said land and premises under said deeds of trust or any right under said deeds, *except to have said land and premises sold and to have his claims paid out of the proceeds of such sale.*"

He says the whole subject matter of this bill is embraced in cause 6201, which is still pending, and that if Pepper is entitled to any relief, he must seek such relief in cause 6201 by bill of review or otherwise. (Rec., 51).

Defendant, A. C. Bradley, answered about to the same effect. (Rec., 20).

Defendant, Gray, denies, in her answer, that she was a purchaser with notice of Pepper's paramount claims on sub-lot A.

It is believed that the answers of the other defendants cover either points now immaterial, or are repetitions of some of the defenses set up by Shepherd in his answer.

A Receiver was appointed to collect the rents *pendente lite* (Rec., 36, 37), who has paid over the proportion fixed by the court (Rec., 55) to the owners of the furniture, and has held the balance ($3,600.00 per annum) subject to the order of the court and for taxes, repairs, etc , on the real estate.

Testimony was taken and the cause having been heard, the court decreed, in substance, that, unless Shepherd paid, before a day fixed by the court, the debt, as ascertained by the court, the whole of sub-lot 3, square 164, should be sold and the proceeds

distributed between Pepper and Gray in proportion to the relative values of the two portions of said lot on which they respectively held the first liens; and that, if Mrs. Gray's debt was satisfied otherwise than by the sale of said lot, the proceeds of the sale of that lot should, also, be paid over to Mr. Pepper.

The court, also, appropriated so much of the rents now in the Receiver's hands as are necessary to repay the taxes and insurance premiums advanced by Pepper to be applied in that way, and directed that the remainder of the rents in the Receiver's hands should be applied to the payment of whatever surplus might remain due to Pepper on the notes, &c., after exhausting his real estate security.

The decree further directed that, if the net proceeds of sale should be insufficient to pay complainant's said claims, complainant should have and recover the balance of said claim decreed to be due and should have execution therefor. It also affirmed the order of court dismissing the petitions filed by Shepherd on March 24, 1885.

From this decree Pepper and Shepherd have appealed to this court and given the required bonds. Mrs. Gray has never perfected her appeal to this court. (Rec., 151, 152).

The decree appealed from was accompanied with the opinion reported in 4th Mackey, 269, a copy of which is printed as an appendix to this brief.

At the present time the principal of Shepherd's debt is more than ten years overdue, and Pepper has received no interest for more than thirteen years. The only effect up to this time upon Shepherd's position, which has resulted since the execution of the deeds of trust, has been the appointment in this cause

of a Receiver for the preservation of the property, in whose hands there is now about $14,000 in moneys and securities.

Shepherd being the only party who has perfected an appeal, the only rights involved here are those of the mortgagor, Shepherd, and his mortgagee, Pepper.

The purpose of this appeal by Shepherd is to reverse a decree directing the payment of Pepper's debt or in default of that a sale of the mortgaged property, but preserving the equities of all parties to the suit, and by such reversal to send the appellee out of the court, after more than ten years' litigation over an acknowledged debt, with no other redress than the notes of the insolvent Alexander R. Shepherd, action on which is barred, it is claimed, by the statute of limitation. And this is done without any tender by Shepherd of payment, security, or any protection whatever to Pepper.

Nor has Shepherd even pretended to set up any meritorious defense. The objections of Shepherd's counsel to the sale of the property and the satisfaction of Pepper's debt therefrom (as far as is now possible), are wholly technical and refer to mere points of practice.

Brief of Argument.

The appellant does not deny that the debt is *bona fide*, that it is overdue, that it belongs to the appellee, nor that the decree is for the proper amount.

He also admits that certain property described in the two deeds of trust referred to in the bill of complaint, was conveyed by him to trustees to secure the

payment of the debt now confessedly due and unpaid, and he even asserts that the title to the property so conveyed still remains in the trustees to whom he conveyed it, and that the trusts which he created remain unexecuted.

In the face of these facts, and in the face of the certainty that the appellee must lose his entire debt unless it is paid out of the proceeds of the property pledged for its payment, the appellant contends that the decree of foreclosure entered by the court below is erroneous, because at the time the bill of complaint was filed the appellee had lost absolutely and finally all right to have executed the trust that was created for his benefit by the appellant.

This surprising result, this complete destruction of his just and legal claim upon the property of the appellant is said to have been brought about by the appellee himself in heretofore filing a bill to substitute a trustee (one of the trustees named in the deeds of trust having refused to act) and by the proceedings in that cause.

The proposition of the appellant's counsel upon this point which relates to and covers the first, second and third assignments of errors is this: "The proceedings in cause No. 6201 should estop the complainant from maintaining the bill in this case and be a bar to it." (Brief, p. 13.)

In reply to this general proposition and to the various considerations that are urged in its support, we say:

I.

CAUSE NO. 6201 WAS A BILL SIMPLY TO SUBSTITUTE A TRUSTEE FOR REASON. IT IS NOT IDENTICAL WITH THIS CAUSE NO. 7803, AND IT DID NOT ADJUDICATE THE QUESTIONS ARISING IN THIS CAUSE.

a. The parties to the bill in 6201 were Pepper, complainant, and Shepherd and wife, and his trustees named in the two deeds of trust to secure Pepper and in the general deed of assignment for the benefit of his creditors, defendants.

The occasion for filing the bill, which was the refusal of one of the trustees to act, is plainly stated therein. The object which was sought thereby was the substitution of a trustee.

If there were any doubt as to the nature of the proceeding in said cause No. 6201, it would be set at rest by reference to the principal prayer and by the decree of the court. That prayer is:

> "That a trustee be appointed to forthwith *execute all the trusts reposed in them respectively by the said deeds of trust.*" (Rec., p. 246.)

It will be observed that the court is not asked that its own officer shall make the sale, as is usual, and has occurred in the pending bill. The bill in No. 6201 prays that the trustee when appointed shall execute the powers created by the deed of trust, and not any powers given to him by the court. It is evident that the court regarded this as a bill merely to substitute a trustee, for in substituting a trustee the court necessarily determined that there was a valid and subsisting debt due to Pepper by Shepherd, and that

there was a valid and subsisting trust to secure that debt. That decree implies that the debt must be at sometime paid, and that the mortgage must, at some time and in some way, be executed or foreclosed. A refusal by the court to direct a foreclosure, if it had regarded such a decree as within the scope of the bill, would have been inconsistent with the propositions just referred to as involved in the decree actually entered by the court. And lest any such inference from or construction of that decree in respect to foreclosure should thereafter be attempted, the judge adds to this decree in his own hand-writing. "*This decree is without prejudice to the other rights of the defendant.*" By this language he clearly reserves all other questions, including that of foreclosure.

It is submitted that if this decree rendered in 6201 had been valid and operative, instead of being void and inoperative, as it was adjudged to be, its effect would have been merely to adjudicate the plea of usury and to substitute Johnston in the place of Bradley, as a trustee, and nothing more. It necessarily left Pepper's right to the execution of the trusts vested in the trustees untouched and unimpaired. It left him free to pursue any remedy, including foreclosure and sale, against Shepherd and against the property covered by the deed of trust as though Johnston had been originally named as trustee therein instead of Bradley, as though proceedings 6,201 had never been instituted.

The present cause, No. 7803, is a foreclosure suit which No. 6201 was not. It makes Mrs. Gray, the holder of a junior incumbrance, and her trustees and also the creditors secured by the voluntary assignment executed by Shepherd, parties defendant.

It sets up an equitable mortgage on sub-lot A on which a part of the improvements mentioned in the deed of trust are erected.

It alleges that Mrs. Gray was a purchaser of sub-lot A, with notice of the prior incumbrances. It alleges also the purchase by Mr. Shepherd of the outstanding proprietary title of Mr. Harris' heirs to sub-lot A, a fact which was necessarily unknown because it had not transpired at the time the bill of complaint in cause No. 6201 was filed, the purchase not having been completed and the deed delivered until a year or more later.

It states the fact that the adjudication in cause No. 7052 established that the decree passed in No. 6201 was a nullity. It prays that a trustee or trustees may be appointed by the court to sell the whole of lot 3, and for an injunction, and a Receiver, and for general relief.

It is obvious, therefore, that in respect of parties in respect of subject matter, and in respect of the relief prayed for, the two bills under consideration are wholly different, and that none of the questions that were involved in the pleadings in this cause were involved in or adjudicated in cause No. 6,201.

Strong vs. *Grant*, 2 Mackey, 224–5;
County of Mobile vs. ~~Campbell~~ Kimball, 102 U. S., 705;
Jones ~~Hill~~ vs. *Evansville R. R.*, 91 U. S., 534.

b. But, in any event, the decree in that case would not operate to bar a foreclosure under the pending bill, for the reasons: *First*. The adjudication, if binding upon one party must be binding upon all; yet the court expressly excludes any such idea with

respect to the defendant by its language: "this decree is without prejudice to the other rights of the defendant." Manifestly, if the other rights of defendants, besides the substitution of a trustee, and including their right to resist foreclosure, were not passed upon, the right of the complainant to demand a foreclosure was equally withheld from adjudication by this provision of the decree.

Gardiner vs. *Sharp*, 4 Wash., C. C. Rep., 609;
Wells Res. Jud., Sec. 199;
Walden vs. *Bodley*, 14 Pet., 161;
Hughes vs. *U. S.*, 4 Wall., 237.

Second. Moreover the decree in No. 6,201 is too uncertain to operate as an estoppel. Mr. Shepherd has always claimed this to be the case, and the court in its decree and opinion in cause No. 7052, has said that the decree in No. 6201 was so vague and valueless that it did not even constitute a cloud on the title to the property involved, and did not even effectively appoint a trustee.

Russell vs. *Place*, 94 U. S., 606-608;
Wells Res. Jud., Sections 216-224-230.)

As to the right to refer to the opinion of the court to ascertain the real point decided and the extent of the estoppel—

See ~~*Phelps vs. Harris*, 11 Otto, 370-370.~~
Cromwell vs. *County of Sac.*, 4 Otto, 351, 353, 354, 356;
Graham vs. *Railroad*, 3 Wall., 704-710-711;
Davis vs. *Brown*, 94 U. S., 428-429;
Russell vs. *Place*, 4 Otto 608-609;
Strong vs. *Grant*, 2 Mackey 218, 223-224,225.

II.

THE APPELLEE PEPPER IS NOT NOW ESTOPPED FROM ASSERTING A LIEN UPON SUB-LOT A, (THE REAR LOT) BY REASON OF HAVING ELECTED IN CAUSE No. 6201 TO ENFORCE A SALE OF THE PROPERTY DESCRIBED IN THE DEEDS OF TRUST.

The doctrine of election is predicated upon the idea that the choice has been made after full knowledge of all the circumstances, and after an opportunity for an intelligent choice of actions. When the bill in No. 6201 was filed it was known to complainant that Mr. Shepherd had a mere tax-title to sub-lot A, which constitutes the rear portion of sub-lot 3. That fact was also reasserted by Mr. Shepherd in his answer in that case. In that answer Mr. Shepherd further asserts that the tax-title which he had purchased had "turned out to be void and of no effect." (Rec., p. 261). Consequently an attempt at that time by Mr. Pepper to reform his deeds of trust, so as to include the rear lot would have been a vain thing since Shepherd had absolutely no title to that lot, and Mr. Pepper was therefore driven to assert his lien against the property mentioned in his deed, to which alone Mr. Shepherd had a title. Now, it will be borne in mind that it is conceded both by Mr. Pepper and Mr. Shepherd that it was intended and agreed that the deeds of trust to secure the former should include this sub-lot A. This would give Mr. Pepper a right to assert an equitable mortgage against that rear lot, so that, when subsequently Mr. Shepherd bought-in the proprietory title thereto, Mr. Pepper was, for the first time, in a position to assert an effective lien against that lot. It cannot, therefore, be

said that Mr. Pepper elected, in a legal sense, at the time the bill in No. 6201 was filed, to assert his lien only against the lot described in his deed of trust and to finally waive his claim of lien against the rear or sub-lot A.

III.

THE APPELLEE, PEPPER, IS NOT ASSERTING ANY LEGAL TITLE IN HIMSELF TO THE REAL ESTATE INVOLVED, BUT IS SEEKING A SALE OF THE ENTIRE LOT, AND THAT AN UNDISPUTED TITLE MAY BE PASSED TO THE PURCHASER.

On page 17 of his brief appellant's counsel appear to contend that certain language used in the bill may be construed to constitute an assertion of a legal title in fee simple to the property mentioned in Mr. Pepper's deeds of trust by virtue of the trustees' sale, and the conveyance by those trustees to Mr. Pepper. It would be singular if the construction by hostile counsel of these expressions could operate to deprive complainant of his essential rights, especially as the decree passed in cause No. 6201 was adjudged to be inoperative and void, on the bill of complaint filed by the appellant, Shepherd, in cause No. 7052.

The adjudication destroyed Pepper's title supposed to have been derived through that decree, as Pepper and Shepherd both assert.

It also deprived Pepper's actions with reference to said decree, such as causing a sale to be made and accepting a deed, of all legal significance and importance.

The court in dismissing the bill which Shepherd filed in cause No. 7052 to remove the cloud upon his title, caused by the decree in 6201 and the sale thereunder, said:

"I am of opinion that the decree in question in this case is inoperative and void for uncertainty. It purports to substitute a trustee in one of two deeds mentioned in the pleadings, without designating which one of them. It is true that it can be inferred from the comparative effects of the substitution in the one or the other case, that the court was not likely to intend to substitute Mr. Johnston for Mr. Bradley in the deed which conveyed only an equitable title; but I do not think that I am at liberty to explain and give certainty to the decree by reference to such considerations. It has been suggested that a decree may be explained by reference to the pleadings on which it is based, and this undoubtedly may be done in a proper case, but I do not find that the uncertainty of the decree in this case can be cleared up in that way. *It follows that if the decree is uncertain on its face the alleged title of Pepper through Mr. Johnston, as substituted trustee, is not a cloud upon the title of the complainant, and, consequently, this court can not take jurisdiction to grant the relief prayed; therefore,* the decree must be that the bill be dismissed.

JAMES, *J.*"

Pepper, in his bill in this cause, fully recognizes the force and effect of this decision. He says "it appears by the said opinion of the court that said decree did not give to said Johnston any power to sell. Said decree was in effect an adjudication upon and favorable to the averments in said Shepherd's bill of complaint in said court, that said sale was without authority *and the deed of said Philip and Johnston was null and void.* And as said Shepherd has always averred

and insisted that said decree was void and said sale a nullity and to the end that said sub-lot 3 of Shepherd's sub-division may be sold as a whole, *complainant files this bill in order* that an undisputed title to the whole property may be obtained by foreclosure proceedings under the order and decree of this court." Accordingly the only prayer germane to that question is as follows:

> "That a trustee or trustees may be appointed by this court to sell the whole of lot 3 of A. R. Shepherd's subdivision of square No. 164 with the improvements thereon." (Rec., p. 506.)

In view of this adjudication by the court in said cause No. 7,052, and in view of the distinct averment by Pepper as to the effect of that adjudication on his own title, there is no foundation whatever for the pretension made in the brief for the appellant (page 17) that Pepper is still asserting a legal title, and trying to make a bargain with the court as to the terms on which he shall give it up.

There is as little foundation for the pretension that anything done by Pepper in relation to this void title, before it was declared void, can constitute an election for any purpose.

IV.

THE APPELLEE, PEPPER, THE COMPLAINANT IN THE BILL IN THIS CAUSE, IS ENTITLED TO HAVE SOLD THE WHOLE OF SAID SUB-LOT 3. THE DECREE APPEALED FROM PROVIDING FOR SUCH SALE IS NOT ERRONEOUS.

It will be recollected that it is a conceded fact that sub-lot A was omitted from Mr. Pepper's deed by

accident, if not by fraud. Ordinarily, therefore, complainant could assert an equitable mortgage as against that property, and the decree appealed from in fact establishes the mortgagee's equitable lien upon that rear lot. It will also be remembered that sub-lot 3, which is decreed to be sold, embraces the property included in Pepper's deed of trust as well as sub-lot A.

(1.) Nor can Mr. Shepherd now deny that the whole of lot 3, which includes sub-lot A, should *be sold in its entirety*, as decreed in view of his answer to this testimony.

(*a.*) In his answer in cause No. 6,201, he says that—

> "It would be impossible to make a sale and division of said property, under the said deed of trust, without irreparable injury to if not total destruction of a large portion of the dwelling-house which is erected on said lot. * * *
>
> "Said dwelling-house would be entirely incomplete without the addition of that portion called the picture gallery, the servants' apartments and the laundry and drying rooms, &c., &c., are underneath the said portion of said dwelling-house as well as the heating apparatus for a large portion of the house, *and that if said lot A, which is not included in the deed of trust of the said complainant shall be separated from that portion which is included in the said deed of trust, a dividing line would not only take off the said picture gallery, but would take off and destroy a portion of the back part of the main dwelling-house.*"

He also avers that the creditors to whom he refers "are entitled to have the property preserved intact." (Rec., pp. 260, 261.)

In his testimony he states that it was his intention to give Mr. Pepper security for his loans on all the property on which the house was constructed and its appurtenances. (Rec., 351.)

(*b.*) It may be added in this connection that in any view this rear lot is encumbered by both Pepper's and Gray's deeds of trust, so that Mr. Shepherd has no such interest as could justify this objection from him. Mrs. Gray, to whom Shepherd has conveyed his rights in this lot, has, by abandoning her appeal, assented to the sale of the entire lot 3 as decreed.

2. Neither can Mrs. Gray urge this objection.

(*a*) There is good ground for asserting that Mrs. Gray received her mortgage in the belief that Mr. Pepper's prior mortgage included sub-lot A, and with the full understanding on her part that she was securing only a second lien thereon.

This view is strongly supported by the testimony of Mr. Brown and the letter accompanying the latter's testimony. Rec., p. 177.

The letter is in part as follows:

"APRIL 18, 1876.

"Mrs. MERCY M. CARTER,
Present.

"DEAR MADAM: In compliance with your request of yesterday for our opinion as to the safety of transferring a loan of $40,000 from its present position to the residence of ex-Governor A. R. Shepherd, situated on the corner of Connecticut avenue and K st., (*same to be secured by a second mortgage,*) *the prior mortgage being for* $45,000, we would say that upon examination we are reliably informed that the property has

cost $150,000 and this amount we do not consider excessive considering the unusual size and character of the improvements, &c., &c.

Rec., p. 178.

(*b.*) In addition to the knowledge of Pepper's right to a paramount lien imputed to her by the letter cited, Mrs. Gray is chargeable with notice of the land records, among which the deeds of trust were duly recorded. These records show that there was conveyed to secure Mr. Pepper the part of lot 2 therein particularly described, "together with *all the improvements, ways, easements, rights, privileges and appurtenances to the same belonging or in any wise appertaining*, and all the estate, right, title, interest and claim whatsoever, whether at law or in equity, of the said parties of the first part, of, in, to or out of the said piece or parcel of land and premises." (Rec., p. 247.)

She is chargeable, in connection with these deeds of trust, with knowledge of the easements and improvements which were visible and necessary for the use of the house as then constructed. These easements and improvements were visibly and notoriously upon, or required the use of, sub-lot A, as stated and explained by Mr. Shepherd. (Rec., p. 260.)

c. Mrs. Gray is a mere mortgagee and not the owner in fee of sub-lot A. She takes the property mortgaged subject to both the prior and subsequent interests of other parties as such interests are usually ascertained and administered by a court of chancery. That court administers such interests for the protection and benefit of all concerned.

She will not therefore be allowed to use her mortgage on sub-lot A as a shield to prevent a sale of the entire lot 3.

Her only right is to have the proceeds of that lot first applied to pay her debt, and this right is in terms secured by the decree appealed from.

These considerations show that the case of *McLaughlin* vs. *Barnum*, 31 Md., 444 and 445, is inapplicable to the question here at issue.

In that case the complainant had no such interest in the contiguous property which he was seeking to sell in connection with his own, as grows out of the involved relations of Gray and Pepper as mortgagees, and renders it imperatively necessary to marshal the securities as decreed.

d. Thus far we have considered Mrs. Gray's objection to the sale of the entire lot 3, as though it were open for consideration in this court.

But the fact is that Mrs. Gray never perfected her appeal, nor did she make any attempt to do so.

The decree as passed by the court below is therefore final and conclusive as to her rights, and she must be regarded as acquiescing therein.

V.

Appellant's next assignments of error are that the court below erred in dismissing the two petitions of Shepherd, filed in March, 1885 (Rec., 142, 144), and in entering a personal decree against Shepherd for any deficiency remaining after exhausting the mortgaged property. The purpose of these petitions was

for leave to prove, after the final argument of the case, that Pepper had sued Shepherd at law, and that that suit was still pending, and for leave to plead the statute of limitations to such personal claim and to apply such statute, not to the time of the filing of the bill, but to the time of such final decree.

To this it is answered:

1. The fact that there was a suit at law pending was already made an issue in this cause. (Rec., 24.) Of course this was affirmative matter, and should have been proved. It was not proved for the all-sufficient reason that Mr. Shepherd had never been served with any process in any suit at law by Pepper, nor had ever entered an appearance in such suit, nor was his appearance secured or attempted by attachment of his property.

2. The deficiency decree is a corallary of foreclosure without any special prayer and by virtue of the general jurisdiction and power of the court.

3. A deficiency decree is the rule in this jurisdiction, and is by statute a necessary part of every foreclosure decree which the court may enter.

§ 808 Rev. Statutes, U. S. Relating to the District of Columbia is as follows:

> "The proceeding to enforce any lien shall be by bill or petition in equity, and the decree, besides subjecting the thing upon which the lien has attached to the satisfaction of the plaintiff's demand against the defendant, *shall adjudge* that the plaintiff recover his demand against the defendant, and that he may have execution thereof as at law."

See *Dodge* vs. *F. S. & T. Co.*, 106 U. S., 445.

It has been established in an earlier portion of this brief, that the pending cause is of the same character of foreclosure proceeding as was *Dodge* vs. *F. S. & T. Co.*

If, therefore, appellant was in any way surprised it was because of his failure to consider the statutory decree now required in such cases, in this jurisdiction.

4. The personal decree is just in itself.

If reversed, it is only to allow appellant to plead the statute of limitations to a debt confessedly just, on which no suit at law could have been brought, because of appellant's permanent and continued absence beyond the jurisdiction of the court, and in a case where it is evident that recourse must be had to execution on such judgment to recover the deficiency that must arise, as the real estate can, under no circumstances, yield enough on a sale to satisfy the liens upon it.

The exception to the statute of limitations of absence beyond seas is abolished by statute.

§ 466 Rev. St., U. S. Rel. to D. C.

VI.

Appellant's last assignment of error refers to that part of the decree directing the rents in the receiver's hands to be paid to complainant.

Mr. Shepherd has been insolvent for years, and, as far as the record shows or any information in counsel's possession goes, still is. The record shows a number of unpaid judgments. (Rec., p. 222, &c.) He has not paid a penny for taxes, interest or insurance for more than thirteen years. The property is

gagee should have a representative among the trustees making a foreclosure sale. These trustees must exercise discretion in respect to important matters, in the determination of which Mr. Pepper's wishes, rights, and duties should be represented.

See *Holden* vs. *F. S. & T. Co.*, 10 Otto, 72, 74.

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WALTER D. DAVIDGE,
For Appellee.

only a fractional part of the interest alone. Nothing can be paid therefrom on account of principal.

Counsel for appellants say in their brief that the Receiver in *Grant* vs. *Ins. Co.* was appointed solely on the ground "that the property was going to ruin and decay." This is an extreme view of that case. The extraordinary injuries to the mortgagor in that case and in this are very similar, and due to very similar causes, and broad equity and justice require in both of these cases that the mortgagor should do the tardy justice of not still further appropriating rents, that in every view of legal right and reasons of justice should go to the mortgagee. Moreover,

It has been established in an earlier portion of this brief, that the pending cause is of the same character of foreclosure proceeding as was *Dodge* vs. *F. S. & T. Co.*

If, therefore, appellant was in any way surprised it was because of his failure to consider the statutory decree now required in such cases, in this jurisdiction.

4. The personal decree is just in itself.

If reversed, it is only to allow appellant to plead the statute of limitations to a debt confessedly just, on which no suit at law could have been brought, because of appellant's permanent and continued absence beyond the jurisdiction of the court, and in a case where it is evident that recourse must be had to execution on such judgment to recover the deficiency that must arise, as the real estate can, under no circumstances, yield enough on a sale to satisfy the liens upon it.

The exception to the statute of limitations of ab-

[illegible] is abolished by statute.

On the whole it is confidently submitted that this court will not deprive the appellee, Pepper, of any of his rights under the decree appealed from, because of the reasons set up by the appellant which are wholly without justice and which ought not to weigh at all in a court of conscience.

Mr. John F. Hanna, one of the trustees appointed by the court below to sell the real estate under the decree appealed from, has died since that decree was signed. He was the representative of Mr. Pepper's interests in that decree. It is requested that this court now substitute in his place some suitable person, as it is usual and proper that the first mort-

gagee should have a representative among the trustees making a foreclosure sale. These trustees must exercise discretion in respect to important matters, in the determination of which Mr. Pepper's wishes, rights, and duties should be represented.

See *Holden* vs. *F. S. & T. Co.*, 10 Otto, 72, 74.

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NOV 21 1889

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1889.

ALEXANDER R. SHEPHERD *et al.*, *Appellants*,

vs.

GEORGE S. PEPPER, *Appellee.*

} No. 136.

Appendix to Brief of Appellee.

R. O. Polkinhorn, Printer, 632 & 634 D Street, N. W.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1889.

ALEXANDER R. SHEPHERD *et al.*, *Appellants*,

vs.

GEORGE S. PEPPER, *Appellee.*

No. 136.

Appendix to Brief of Appellee.

Opinion of Merick, J., in Court Below.

The facts necessary to be adverted to are these:

Shepherd gave to the complainant, Pepper, a deed of trust upon his property known as part of lot 2, in square 164, of this city, for $35,000, and shortly after gave him an additional deed of trust upon the same property, to secure the sum of $10,000 with interest. Afterwards Shepherd gave a deed of trust to secure Mrs. Mercy G. Gray a certain sum of money upon the same property, including in her deed the adjacent property known and designated in the pleadings and proofs in this cause as lot A, adjoining the property which was conveyed in trust to secure Mr. Pepper.

At the time of all the encumbrances there were valuable buildings erected upon that part of lot 2 which was embraced in the deeds of trust to Pepper, and those buildings projected over and were in part built upon the lot A, which was one of the subdivisions made by Mr. Shepherd of the original divisions of the square; and not only did they project over it, but there were certain other easements connected with it, adits to the buildings, outlets, carriage-ways and doorways over this adjacent property, but not specifically set out in terms in the deeds of trust to Pepper.

In this state of the case, upon default having been made, Pepper proposed to sell the property under the two deeds of trust to him, but by reason of the omission or refusal of one of the trustees to concur in the sale under the provisions of the deeds of trust, he had recourse to a court of equity to remove one of the trustees and to supply his place by another.

In the progress of that suit it so happened, by inadvertence, that when the decree came to be made to substitute another trustee, there was an error in the description of the property in the decree, by leaving in the designation of the property a blank, the result of which was that the decree was uncertain in itself and practically void on account of the uncertainty in its description of the property.

The defect escaped observation until the substituted trustees had undertaken to make a sale at which Pepper became the purchaser. After the sale Mr. Shepherd filed his bill on the equity side of the court to set it aside for various reasons alleged, as being void and being a cloud upon his title. That cause was so proceeded with that the bill was dis-

missed by the equity court, because, as the judge held, the sale to Pepper under the decree was utterly void. The decree being entirely uncertain as to the property there was no effective appointment of a trustee, and there was no effective sale under the decree; the whole thing, in point of fact, was a miscarriage. Thus the bill was dismissed by the court of equity upon the ground that there was no cloud upon the title, because the sale itself was a nullity.

Thereafter Pepper, the beneficiary in the first two deeds of trust filed the present bill making Shepherd, the original mortgagor and Mrs. Gray, the subsequent incumbrancer, parties, as also the trustees in a certain subsequent deed of trust which need not be referred to particularly in the matter now under consideration.

The parties came in to answer that bill; Shepherd on his part, in his answer, as well as in the bill which he had filed for the purpose of setting aside the sale, averring that that sale was an entire nullity and that it passed no title. Mrs. Gray came in and by her answer also averred that the sale to Pepper was a nullity. Both averring the sale to be a nullity still object that Pepper has not any right now to make a sale of the property, upon the ground that having made his sale he must abide by it. In the same breath they assert that he acquired no title under that first sale, and that by virtue of the sale he is estopped from selling again. That is the main question in this cause.

Now it is perfectly apparent that the defence thus made is a defence which a court of equity cannot entertain. They claim that he is estopped by a sale, and yet, in the same breath, they say that nothing

passed under that sale, and that the decree was ineffective to pass any title to the trustees under it; and they have forced Shepherd by the attitude taken in the independent bill by him and in the defences made here, to appeal for redress to the court once more.

While they undertake to maintain that there is an estoppel on his part, they seem to forget altogether that there was a paramount estoppel not only in law but according to the fundamental principles of justice, to the defences which they now set up. It is impossible that they can aver in one breath that the sale was utterly void and nugatory, and in the same breath deny that he has any redress and any right to appeal to a court of equity to enforce his rights, it being admitted on all hands that his debt has not been paid, and that he has received no benefit whatsoever from the sale thus made and thus assailed.

During the progress of the argument a case was revived in my memory, which entirely covers and overwhelms any such defence as that. I refer to the case of *Philadelphia etc. R. R. Co.* vs. *How.*, 13 How., 307, the decision in which was given by Judge Curtis and the appositeness of the rule laid down there will appear when I state what were the facts in that case which affect that portion of the decision which I shall read.

Sebre Howard had brought a suit on the law side of the Cecil county court of the State of Maryland, against the railroad company upon a contract for an accounting and in *assumpsit*. When the case came on for trial, the railroad company defended the case on the ground that the action should not be in *assumpsit*, but that the contract made between the

parties was a contract under seal, and Howard's remedy, if any, was in covenant. He was dismissed from the court upon the defence thus made. He turned around and brought suit against the company in the United States court for the district of Maryland, in covenant, and when that case came on to be tried, the defendant set up the defence that it was not a covenant, that the contract was not under seal, that he could not maintain covenant, but must sue in *assumpsit*. Here was almost a perfect parallel to the pretensions made by the defendants in this case. That being the predicament of the case at the trial, this prayer was made on the part of the plaintiff (I read from page 335 of 13 Howard).

> "If the jury find from the evidence that this instrument of writing was produced in court, and relied upon by the present defendant as a contract under the seal of the Wilmington and Susquehanna Railroad Company, in an action of *assumpsit* brought by Sebre and Hiram Howard against the last mentioned company in Cecil county court, and that the said suit was decided against the plaintiffs upon the ground that this instrument was duly sealed by the said corporation as its deed, then the defendant cannot be permitted in this case to deny the validity of said sealing, because such a defence would impute to the present defendant itself a fraud upon the administration of justice in Cecil county court."

In commenting upon the prayer and affirming it, the Supreme Court, by the mouth of Judge CURTIS, uses this language at pages 336-'7 :

> "It is further objected that the facts supposed in the instruction did not amount in law to an

estoppel. We think otherwise. *Hull* vs. *White*, 3 C. & P., 137, was detinue for certain deeds. The defendant wrote to the complainant's attorney and spoke of the deed as in his possession under such circumstances as ought to have led him to understand a suit would be brought upon the faith of what he said. Best, *C. J.*, ruled, 'If the defendant said he had the deeds, and thereby induced the plaintiffs to bring their action against him, I shall hold that they may recover, though the assertion was a fraud upon his part.' In *Doe* vs. *Lambly*, 2 Esp., 635, the defendant had informed the plaintiff's agent that his tenancy commenced at Ladyday, and the agent gave a notice to quit on that day. This not being heeded ejectment was brought, and the tenant set up a holding from a different day. But Lord Kenyon refused to allow him to show that he was even mistaken in his admission, for he was concluded. *Den* vs *Oliver*, 3 Hawks, 479; *Crockett* vs. *Lashbrook*, 5 Mon. (Ky), 530; *Trustees* vs. *Williams*, 9 Wend., 147, are to the same point. These decisions go much further than this case requires, because the defendant not only induced the plaintiff to bring this action, but defeated the action in Cecil County court by asserting and maintaining this paper to be the deed of the company; and this brings the defendant within the principle of the common law, that when a party asserts what he knows is false, or does not know to be true, to another's loss and his own gain, he is guilty of a fraud; a fraud in fact if he knows it to be false, fraud in law if he does not know it to be true. (*Polhill* vs. *Walter*, 3 B. & Ad., 114; *Lobdell* vs. *Baker*, 1 Met., 201.) Certainly it would not mitigate the fraud if the false assertion were made in a court of justice, and a meritorious suit defeated thereby. We are clearly of opinion that the defendant can not be heard to say that what was asserted on the former trial

was false, even if the assertion was made by a mistake. If it was a mistake, of which there is no evidence, it was one made by the defendant, of which he took the benefit and the plaintiff the loss, and it is too late to correct it. It does not carry the estoppel beyond what is strictly equitable to hold, that the representation which defeated one action on a point of form should sustain another on a like point."

That case is absolutely in point as to this: Shepherd filed his bill asserting that the sale was a nullity by reason of the defect in the decree appointing a trustee. He now comes in, and so does Mrs. Gray, asserting that that sale was absolutely void, and yet saying, because that sale was void, the party is to be stripped of all his rights, and he must stand by that inefficacious sale. If they asserted the validity of the former sale then, of course, Pepper would be in possession, and they might say he was not entitled to any further remedy. But having asserted solemnly the invalidity of that sale, they cannot now interpose the proceedings which culminated in it as an obstacle to the complainant in his efforts to obtain satisfaction of a debt which is honestly due to him. That is the principal point in this cause.

The second question in the case is made by Mrs. Gray to this effect: that inasmuch as she is the first incumbrancer on this side lot A, Mr. Pepper shall not be entitled to have the whole property sold, without first discharging her whole claim.

So far as his title to sell the whole property is concerned, it rests upon two grounds: First, that he was an equitable mortagee as to that additional lot, and it is admitted as between him and Shepherd, that it was the design of those deeds of trust to embrace

that additional lot, and if Mrs. Gray were out of the case there would be no difficulty in vindicating the absolute right of Pepper to have the entirety sold under these proceedings, which are to reform a deed and then carry out the contract thus reformed.

But Mrs. Gray says that she had no notice whatsoever of any title, equitable or otherwise, as between Shepherd and Pepper in respect to the lot A, which is a dependent lot upon the other; being, as I said in part built upon in connection with the principal building upon the lot 2, which he, Pepper, is entitled to as first encumbrancer.

There might be, if the counsel for plaintiff had made it so in his evidence in the cause, maintained perhaps with success on the part of Pepper, that he was entitled to have the whole of that additional lot sold because that additional lot, by the manner of the structure, is made a servient tenement to the other lot, and the servitudes are notorious and visible. Part of the building was actually erected on this additional lot, and patent to the eye of everybody concerned, and the adits to it of the carriageways and doorways were also over this lot A, and he might perhaps very successfully maintain his rights to sell the building along with the easements upon this additional lot, and as a necessary part and parcel of its enjoyment, subject, of course, to the fee simple right so far as it did not interfere with these manifest and apparent easements and servitudes visible to the eye of everybody who saw the property.

But it is not necessary for the purpose of the relief prayed in this case, to consider or to decide how far, as between Pepper and Mrs. Gray, that is a servient tenement. It is apparent that the two properties

have been held in a general ownership, and the nature and character of the two perhaps is sufficiently made apparent to the court by the testimony in this cause to this effect, that to sever them would be destructive of the value of both of them. And although Mr. Pepper has not brought home to the knowledge of Mrs. Gray the equitable mortgage as between him and Shepherd, yet the fact of the building being upon the two lots, and the fact being apparent, and, indeed, admitted by the answer of Shepherd, that if a sale was made the whole property ought to be sold together, because it would decrease the value of both to be sold separately, constitute a case where a court of equity should order all the property to be sold together.

The objection made on the part of Mrs. Gray, that she being the senior encumbrancer upon this additional lot, the common rule should be applied in her favor, to wit: that there should be no sale of that additional lot until Pepper, the senior encumbrancer on lot 2 and the junior on the additional lot, had first redeemed her whole debt, would be utterly inequitable as applied to the facts and circumstances of this case. The property being indivisible in its nature, and being admitted to be so upon the record, and it being destructive to the interests of all parties to sell separately, the necessities of the case require and the administration of justice amongst the parties demands that it should be sold together. The court will so decree, because the rule of equity always recognized and enforced wherever it can be, that you shall so use your own as not to injure your neighbor, applies with overwhelming force to the pretensions of Mrs. Gray that she shall hold on in order to

extort (practically that is her position) from the mortgagee a redemption of her whole mortgage when she knows she is not entitled to any but a very inconsiderable portion of the encumbered premises, except in subordination to the mortgage of the other parties.

These views of the case justify this court (there might be others added if it were necessary to go further into the matter) fully in affirming the decree of the court below which determined that the whole property should be sold, reserving to Mrs. Gray such portions of the proceeds of the sale as by the ascertainment of the auditor upon testimony as to the relative value between the two properties may be determined to be the value of her interest in said lot A. That is the utmost she is entitled to in equity, in law and in justice between man and man; which justice between man and man it is the duty of the court at all times to endeavor to carry out, unless some rule of law or arbitrary regulation or some consideration of public policy intervenes to prevent the attainment of that object. Courts of justice do not allow themselves to be trifled with in matters of that sort and do not allow the greed of parties to defeat the purposes of justice and the right and equity of matters if they can possibly prevent it.

The decree of the court below left open one matter for further consideration, which is no longer an open question in this court since the decision in the case of *Keyser* vs. *Hitz*. That matter is the disposition of the rents and profits of this property which have accumulated in the hands of the receiver. Since that decision, this court will hold, until reversed by some higher power, that wherever property subjected

to a lien has been brought within the domain of a court of equity, and a receiver of that property is appointed, whatever rents and profits the receiver gets into his hands will be dedicated, along with the *corpus* of the fund, to the satisfaction of the lien after paying taxes, insurance and the like burdens.

The decree of the court below was, therefore, entirely right as far as it went in directing that these rents and profits should be dedicated to the payment of insurances and taxes which had accrued, and that they should be paid off out of that. The court reserved the consideration of what should be done with the residue of those rents and profits after the satisfaction of those burdens, declaring that it should await the further order of this court. In that respect the decree will be reformed by directing that after the satisfaction of those charges, to be ascertained by the Auditor, the residue of the rents and profits shall go to make up whatever deficiency there may be in the satisfaction of the *corpus* of the debt, by the proceeds of the sale of these two properties recognizing of course, under the circumstances, the right of Mrs. Gray to her share of the proceeds of sale according to the apportionment already indicated, but dedicating the rents and profits primarily to the satisfaction of Pepper's debt, along with the proceeds of the sale of the primary property upon which the house is built.

The testimony does not sustain the assertion that Mrs. Gray took her mortgage with an equitable or imputed knowledge of the other one. We acquit her of actual knowledge and acknowledge her right to the *corpus* of sub-lot A, but the existence of those easements in and upon it, and the indivisibility of

the property make it necessary that the whole should be sold as a unit in order to save loss to all parties, and this justifies the court in sustaining the court below upon the points named, and in making the subsequent disposition of the rents and profits after the satisfaction of the intervening liens.

The counsel will prepare a decree with the modification I have indicated, and the court will sign it. The order of the court dismissing Shepherd's petition to be allowed to plead the Act of Limitations against a personal decree for the deficiency of Pepper's debt is also affirmed.

Office Supreme Court, U.S.
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Supreme Court of the United States.

OCTOBER TERM, 1889.

ALEXANDER R. SHEPHERD ET AL., APPELLANTS,
v.
GEORGE S. PEPPER.
No. 136.

Additional Brief for Appellee.

I. During the argument of this cause an inquiry has been suggested by a member of the Court as to the power of the Court below to decree the sale of sub-lot A.

The question relates to the right of a junior incumbrancer to compel the sale of the incumbered property after the debt secured by a prior incumbrance has fallen due.

It is to be observed that the proceeding in this cause is not a strict foreclosure of the right to redeem, but, in accordance with the practice that prevails in this District, is to obtain a decree for the sale of the incumbered premises, and the application of the proceeds of the sale towards the discharge of incumbrances according to priority.

This practice, which is said by Chancellor Kent to be "evidently the most beneficial to the mortgagor as well as

the most reasonable and accurate disposition of the pledge," prevails not only in this District, but in Maryland, Virginia, South Carolina, and in several other States.

4 Kent, 181, and cases there cited.

It rests necessarily upon the Court's power, exercised without question heretofore, to direct and require the sale of the mortgaged property whenever the debts secured thereon are overdue, and the circumstances of the case make it apparent that the interests of the mortgagor and incumbrancers require such sale.

The following authorities to which the Court was referred in the progress of the argument were submitted in support of this practice.

Finley *v.* The Bank, 11 Wheaton, 304, 306; Hagan *v.* Walker, 14 How., 37, 38; Jerome *v.* McCarter, 94 U. S., 735, 736, 740; Woodworth *v.* Blair, 112 U. S., 8–10; and Hill *v.* Bank, 97 U. S., 453, 454; Vander Kemp *v.* Shelton, 11 Paige, 29.

All the authorities denying the right of the junior incumbrancer to compel a sale of the entire title in the face of objection by the senior incumbrancer seem to apply only (1) in the case of a mortgage and not in the case of a deed of trust; (2) where the complainant has not a first lien on any part of the property sought to be sold; or, (3) where the first incumbrance is not yet due.

In jurisdictions in which the deed of trust has supplanted the mortgage the English rule in respect to the right of a junior incumbrancer to object to a sale of the entire title is not applied.

Clark *v.* Prentice, 3 Dana, (Ky.) 468, 4 Kent, 181, and cases there cited.

Penn *v.* Alsip, 2 Ind., 67.
Trask *v.* Hunt, 8 Blackf., 580.
Vanderkemp *v.* Shelton, 11 Paige, 29.

Nor has this Court ever refused to approve of a sale of the entire title where the complainant has a first lien on the bulk of the property sought to be sold and a second lien on the small remaining portion, and where the first incumbrance is overdue at the time the bill for a sale is filed.

On the contrary, the authorities in this Court, cited above, strongly indicate that, under these circumstances, the whole title will be decreed to be sold.

It will be specially observed that the test of the right to sell the entire title, laid down in those cases, is not the assent or non-assent of the first incumbrancer, but the fact whether the first lien is overdue or not.

The note held by Mrs. Gray matured on May 15, 1879 (Rec., 2, 3, 27), and the pending bill was filed July 20, 1881 (Rec. 1).

It cannot be said that it is a fixed rule of the Chancery Court that a first incumbrancer can deal with his lien in utter disregard of the consequences to a junior incumbrancer. On the contrary, in marshalling securities that Court adopts the maxim, "*Sic utere tuo ut alienum non lædas.*" The case at bar is within the principle on which assets are marshalled for the benefit of lienors, and is within the spirit and equity of the maxim referred to.

II. But in no event can Mrs. Gray object now, as she has never perfected her appeal but has, for more than four years, acquiesced in the decree below.

The record shows that she prayed an appeal during the term, and that it was allowed. (R., 151, 152.)

No step was taken towards perfecting the appeal thus prayed and allowed until the case was called for argument in this Court.

The transcript of the record was filed in this Court at the term ensuing the allowance of the appeal, but such filing was, it is believed, not the act of Mrs. Gray, nor in her behalf, but the act of Shepherd, who had also appealed.

The issuing of a citation has not been waived by Pepper, for his counsel have *specially* appeared. See *precipe.*

It is conceded that neither the taking of security, nor, under the recent decisions, the issuing of a citation is necessary to give jurisdiction.

Whilst this is true, it is equally true that the law requires both the security and the citation, and that the appeal is not perfected in this Court without both security and citation.

The whole effect of the recent decisions is to subject to the discretion of this Court what otherwise would be jurisdictional and beyond such discretion.

Then what is the case presented for the exercise of the discretion of the Court?

Four years elapsed after the allowance of the appeal and not a single step was taken towards perfecting it. The natural and almost necessary inference is that the party who intended to appeal abandoned such intention. What followed? The case was called for argument in this Court, and then, and not till then, counsel for Mrs. Gray asked for leave to give the security. Not even then was leave asked to issue the citation, nor has such leave ever been asked.

Assuming that this Court may pass all proper orders for perfecting an appeal prayed and allowed, it is respectfully submitted that the Court will do so only for good cause. The law as to the security and citation has not been

repealed, and it is incumbent upon the party invoking the exercise of the discretion of the Court to offer some excuse, or, in other words, to show some good cause. No such excuse, nor, indeed, any excuse, is offered. There is no petition supported by affidavit alleging mistake or accident, or any other cause, nor any opportunity afforded to be heard in opposition. There is not even a written motion, and the oral motion for leave to file the bond is not even accompanied by any suggestion of excuse. The motion, as presented to the Court, is entirely consistent with acquiescence in the decree and the abandonment of the appeal. It is to be presumed that if there was any excuse it would be at least stated to the Court; and the failure to state it is convincing that there is no excuse.

III. In the additional brief, filed on behalf of the appellant Shepherd, it is contended that the decree appealed from is erroneous in that it allows interest at the rate provided for in the notes; viz., nine per cent. per annum.

It is urged by appellant that interest should have been fixed at six per cent. from the date of the decree, because that is the rate of interest on judgments and decrees fixed by the statute.

But it is apparent on the face of the decree that the Court did not intend to and did not merge the contract in the decree.

It merely fixed the amount due according to the terms of the contract of the parties, on the payment of which, before the day fixed, the decree would not go into effect, but the cause would be dismissed.

The statute referred to in the appellant's brief can have no application, except to the rate of interest chargeable on

the deficiency found to exist after applying to the debt the net proceeds of sale.

The decree appealed from does not provide for interest in excess of six per cent. on the deficiency that may occur.

NATHN'L WILSON,
for Appellee.

W. D. DAVIDGE,
of Counsel.